



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
MBHB 03-622-F**

In re Application for Reissue of:)	
U.S. Patent No. 6,304,523)	Group Art Unit: TBD
)	
Inventors: Scott Jones and Doug Keenan)	Examiner: TBD
)	
Serial No.: 10/687,510)	
)	
Filed: October 16, 2003)	
)	
For: Playback Device Having)	
Text Display and Communication)	
with Remote Database of Titles)	

PETITION UNDER 37 C.F.R. §1.47(a)

Commissioner for Patent
P.O. Box 1450
Alexandria Virginia 22313-1450

Sir:

Because Douglas Keenan, one of the inventors for the present application, ("the non-signing inventor") cannot be found, and thus attempts to secure the signature of the non-signing inventor on the oath and declaration under 37 C.F.R. § 1.63 were not successful after diligent effort, Applicants submit this Petition Under 37 C.F.R. § 1.47(a) to make application on behalf of the non-signing inventor.

As proof of diligence, Applicants submit the accompanying Declaration of Joseph A. Herndon, registered patent agent and employee of McDonnell Boehnen Hulbert & Berghoff, a law firm having offices at 300 South Wacker Drive, Chicago, Illinois 60606,

06/25/2004 DENMANU1 00000026 10687510

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130.00 OP

McDonnell Boehnen
Hulbert & Berghoff LLP
300 S. Wacker Drive
Chicago, Illinois 60606
(312) 913-0001

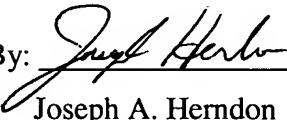
including its Exhibits A-N setting forth attempts to obtain the signature of the non-signing inventor.

Douglas Keenan's last known address is 505 Tamarack Lane, Noblesville, Indiana 46060. The required petition fee of \$130.00 under 37 C.F.R. §1.17(h) is enclosed herewith.

Respectfully submitted,

McDonnell Boehnen Hulbert & Berghoff LLP

Date: 6/22/04

By: 
Joseph A. Herndon
Reg. No. 50,469



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
MBHB 03-622-F**

In re Application for Reissue of:)	
U.S. Patent No. 6,304,523)	Group Art Unit: TBD
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Inventors: Scott Jones and Doug Keenan)	Examiner: TBD
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Serial No.: 10/687,510)	
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Filed: October 16, 2003)	
)	
For: Playback Device Having)	
Text Display and Communication)	
with Remote Database of Titles)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF FACTS BY JOSEPH A. HERNDON
IN SUPPORT OF PETITION UNDER 37 C.F.R. §1.47(a)**

This Declaration of Facts is made as to the facts that are relied upon to show the diligent efforts that were made to secure the execution of the Combined Declaration and Power of Attorney for this Reissue Patent Application by omitted inventor, Douglas Keenan, for the above-referenced patent application after deposit in the U.S. Patent and Trademark Office.

This Declaration of Facts is being made by an available person having first-hand knowledge of the facts recited therein.

1. I, Joseph A. Herndon, am a patent agent registered to practice before the U.S. Patent and Trademark Office: Registration No. 50,469.

2. I am employed by McDonnell Boehnen Hulbert & Berghoff, a law firm having offices at 300 South Wacker Drive, Chicago, Illinois 60606.
3. A patent application for U.S. Patent No. 6,304,523, entitled "Playback Device Having Text Display and Communication with Remote Database of Titles," naming Scott A. Jones and Douglas M. Keenan as inventors, was filed on January 5, 1999 by Richard A. Gollhofer, an employee of the law firm of Staas & Halsey and registered to practice before the U.S. Patent and Trademark Office, Registration No. 31,106. The patent application was assigned Application Serial No. 09/227,086 (hereinafter "the '086 application").
4. Scott A. Jones and Douglas M. Keenan sign an assignment assigning all right and title in the '086 application to Escient Inc. The executed assignment was filed on March 12, 1999. A copy of the executed assignment is attached as Exhibit A.
5. The executed assignment assigning all right and title in the '086 application to Escient Inc. was recorded at reel 9822 and frame 0716. A copy of the Notice of Recordation of Assignment Document is attached as Exhibit B.
6. All rights and title in the '086 application that was held by CDDB, Inc. was assigned to Escient Technologies LLC. A copy of the Notice of Recordation of this Assignment is attached at Exhibit C.
7. All rights and title in the '086 application that was held by Escient Technologies, LLC was assigned to Escient Convergence Group Inc. A copy of the Notice of Recordation of this Assignment is attached at Exhibit D.

8. All right and title in the '086 application was assigned by Escient Convergence Group Inc. to Openglobe, Inc. A copy of the Notice of Recordation of this Assignment is attached at Exhibit E.

9. On April 24, 2003, DNNA acquired the assets of Openglobe, Inc., including the '086 application, in accordance with the attached Asset Purchase Agreement by and among Openglobe Inc. and DNNA. A copy of the Asset Purchase Agreement is attached as Exhibit F.

10. All right and title in the '086 application was assigned by Openglobe, Inc to Digital Networks North America (hereinafter "DNNA"). A copy of the Notice of Recordation of this Assignment is attached at Exhibit G.

11. The '086 application was transferred to the law firm of McDonnell Boehnen Hulbert & Berghoff on or about May of 2003 and Power of Attorney by Assignee of Entire Interest and Revocation of Prior Power is attached as Exhibit H.

12. On October 16, 2001, the '086 application issued as U.S. Patent No. 6,304,523. A copy of U.S. Patent No. 6,304,523 is attached as Exhibit I.

13. On October 16, 2003, Mr. Eric Moran, an employee of McDonnell Boehnen Hulbert & Berghoff and a patent attorney registered to practice before the U.S. Patent and Trademark Office, Registration No. 50,967, filed a reissue patent application for U.S. Patent No. 6,304,523, entitled "Playback Device Having Text Display and Communication with Remote Database of Titles," now Application Serial No. 10/687,510 (hereinafter "the '510 application") at the request of Escient, a Delaware corporation, having a place of business at 2841 Mission College

Boulevard, Santa Clara, California 95054 (hereinafter "Escient"). A copy of the reissue filing papers and reissue patent application is attached as Exhibit J.

14. The '510 application names two inventors: Scott A. Jones (hereinafter "Mr. Jones") and Douglas M. Keenan (hereinafter "Mr. Keenan").

15. Within the executed assignment that assigned all right and title in the '086 application to Escient that was filed on March 12, 1999, Mr. Jones and Mr. Keenan assigned to

ASSIGNEE [Escient], its lawful successors and assigns, the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, continuation-in-part, reexamination, renewal, substitute, extension or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted

(Assignment of the '086 patent application to Escient attached as Exhibit A).

16. The '510 application was filed without a signed Declaration and Power of Attorney naming the two inventors.

17. On November 24, 2003, the U.S. Patent and Trademark Office mailed a Notice to File Missing Parts of Reissue Application for the above-referenced patent application, requesting submission of a signed Declaration. A copy of the Notice to File Missing Parts is attached as Exhibit K. Mr. Jones has since signed a Declaration and Power of Attorney for the '510 application.

18. Upon information and belief formed from a telephone discussion with Timothy W. Dygert, Director of Platform Development at Escient, and from emails from Lauren Quevedo, an

employee of the human resources department at DNNA, Mr. Keenan is no longer an employee of Openglobe, and is not an employee of DNNA or Escient.

19. Upon information and belief formed from emails from Timothy W. Dygert, Director of Platform Development at Escient, Timothy W. Dygert has attempted to contact Mr. Keenan without success.

20. Upon information and belief formed from information received from Susie McNally, an employee of the human resources department at Escient, and corroborated through a White Pages telephone and address search conducted in June 2004, I learned that the last known address of Mr. Keenan is: 505 Tamarack Lane, Noblesville, Indiana 46060, and the last known telephone numbers of Mr. Keenan are (317) 776-1144 and (317) 776-1404. A copy of the White Pages search is attached as Exhibit L.

21. On May 28, 2004, I sent a package via United States Postal Service Express Mail to Mr. Keenan at 505 Tamarack Lane, Noblesville, Indiana 46060. The package contained copies of the reissue patent application, a Declaration and Power of Attorney for the reissue patent application, a cover letter asking Mr. Keenan to sign and return the Declaration and Power of Attorney, along with a pre-paid and pre-addressed return Fed Ex envelope addressed to me at the Offices of McDonnell Boehnen Hulbert & Berghoff. A copy of the letter and enclosures for the letter is attached as Exhibit M.

22. On June 9, 2004, I sent a second package via United States Postal Service Express Mail to Mr. Keenan at 505 Tamarack Lane, Noblesville, Indiana 46060. The package contained a second set of copies of the reissue patent application, a Declaration and Power of Attorney for

the reissue patent application, a cover letter asking Mr. Keenan to sign and return the documents, along with a pre-paid and pre-addressed return Fed Ex envelope addressed to me at the Offices of McDonnell Boehnen Hulbert & Berghoff. A copy of the letter and enclosures for the letter is attached as Exhibit N.

23. During the weeks of May 24, 2004, May 31, 2004, June 7, 2004, June 14, 2004, and June 21, 2004, I called Mr. Keenan at (317) 776-1144 and (317) 776-1404 and left several voicemails requesting that he call me at the Offices of McDonnell Boehnen Hulbert & Berghoff.

24. Mr. Jones advised me that Mr. Keenan may have taken a job at Thomson Consumer Electronics, in Indianapolis, Indiana. Within or about the week of June 7, I contacted the Human Resources department at Thomson Consumer Electronics, in Indianapolis, Indiana. A human resources representative that answered informed me that Mr. Keenan was not currently employed by Thomson Consumer Electronics, and that Mr. Keenan last worked at Thomson Consumer Electronics in August 2003. The human resources representative had no forwarding contact information for Mr. Keenan.

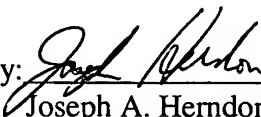
25. On June 15, 2004, I spoke with Bernie Sepaniak, a former supervisor of Mr. Keenan at Escient. Bernie Sepaniak informed me that Mr. Keenan has not worked at Escient for at least a few years. Bernie Sepaniak did not know of Mr. Keenan's whereabouts.

26. On June 16, I spoke with David Andrews, a former co-worker of Mr. Keenan at Escient. David Andrews informed me that he did not know of Mr. Keenan's whereabouts.

27. As of this date, we have not received a reply from Mr. Keenan regarding any of the above-described communications concerning the reissue Declaration and Power of Attorney.

I hereby declare that all statements made herein to the best of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 6/22/04

By: 
Joseph A. Herndon
Reg. No. 50,469
Patent Agent
McDonnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312-913-0001
Facsimile: 312-913-0002

ASSIGNMENT

S&H 12/94

WHEREAS: We, Scott Jones, residing at 1150 West 116th Street, Carmel, IN 46032 U.S.A.; and Douglas M. Keenan, residing at 505 Tamarack Lane, Noblesville, IN 46060 U.S.A. (hereinafter, referred to as ASSIGNOR), have invented certain new and useful improvements in an invention entitled

**PLAYBACK DEVICE HAVING TEXT DISPLAY AND COMMUNICATION WITH
REMOTE DATABASE TITLES**

for which an application for United States Letters Patent was filed as Serial No. 09/227,086 on January 5, 1999;

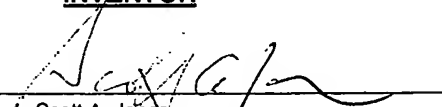
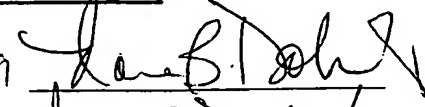


WHEREAS: ESCIENT INC., an INDIANA corporation in the U.S.A., having a place of business located at 12955 Old Meridian Street, Suite 107 in the City and County of Carmel, State of Indiana 46032 U.S.A. (hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that in consideration of the payment by ASSIGNEE to ASSIGNOR of the sum of One Dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNOR hereby sells, assigns and transfers to ASSIGNEE, its lawful successors and assigns, the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, continuation-in-part, reexamination, renewal, substitute, extension or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted; and authorize and request the Commissioner of Patents of the United States and any official of any foreign country whose duty it is to issue patents or legal equivalents thereto, to issue same for this invention to ASSIGNEE, its lawful successors and assigns.

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment and sale;

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNOR and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representative any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS THEREOF, We have hereunto set hand and signed on the date indicated below:

<u>INVENTOR</u>	<u>DATE SIGNED</u>	<u>WITNESS(ES)</u>
1)  Scott A. Jones	24 February 1999	
2)  Douglas M. Keenan	24 February 1999	



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

JUNE 03, 1999

PTAS

STAAS & HALSEY
RICHARD A. GOLLHOFFER
700 ELEVENTH STREET N.W., SUITE 500
WASHINGTON, D.C. 20001



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RECORDATION DATE: 03/12/1999

REEL/FRAME: 9822/0716
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
JONES, SCOTT A.

DOC DATE: 02/24/1999

ASSIGNOR:
KEENAN, DOUGLAS M.

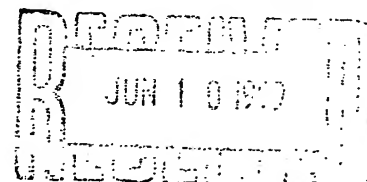
DOC DATE: 02/24/1999

ASSIGNEE:
ESCIENT, INC.
12955 OLD MERIDIAN STREET, SUITE
107
CARMEL, INDIANA 46032

SERIAL NUMBER: 09227086
PATENT NUMBER:

FILING DATE: 01/05/1999
ISSUE DATE:

STAAS & HALSEY



1364.1002/NAC

9822/0716 PAGE 2

ALLYSON PURNELL, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

3-12-99

FD-362 (Rev. 1-1595)
S&H 9/92
To the Honorable Commissioner of Patents

03-22-1999



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ET
U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office
Original documents or copy thereof.



1. Name of conveying parties:
(1) Scott A. Jones
(2) Douglas M. Keenan
2. Name and address of receiving party:
ESCIENT, INC.
12955 Old Meridian Street, Suite 107
Carmel, IN 46032
3. Nature of conveyance:
☒ Assignment
☐ Security Agreement
☐ Other: _____
☐ Merger
☐ Change of Name
Execution Date(s): February 24, 1999
4. Application number(s) or patent number(s): 09/227,086
This document is being filed together with a new application:
(a) The execution date(s) of the application is/are: January 5, 1999
(b) The title is: PLAYBACK DEVICE HAVING TEXT DISPLAY AND COMMUNICATION WITH REMOTE DATABASE OF TITLES
*** OR ***
This document is being filed after filing of the application:
(a) Patent Application No(s). _____, filed _____; or
(b) Patent No(s). _____, issued _____.
5. Name and address of party to whom correspondence concerning document should be mailed:
STAAS & HALSEY
700 Eleventh Street, N.W.
Suite 500
Washington, D.C. 20001
Our Docket: 1364.1002
6. Total number of applications and patents involved: 1
7. Total fee (37 CFR 3.41)..... \$ 40.00
☒ Enclosed
☐ Authorized to be charged to deposit account.
8. Deposit Account No.: 19-3935 (Any underpayment is authorized to be charged to this Deposit Account)
(Attach duplicate copy of this page if paying by deposit account)
9. Statement and signature:-
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Richard A. Gollhofer, Reg. No. 31,106
Name of Person Signing
Richard A. Gollhofer
Signature
3/12/99
Date
Total number of pages comprising cover sheet: 1

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Patent and Trademark Office**

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Washington, D.C. 20231

OCTOBER 25, 2001

PTAS



101824083A

STAAS & HALSEY LLP
RICHARD A. GOLLHOFER
700 ELEVENTH STREET, N.W., SUITE 500
WASHINGTON, D.C. 20001

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RECORDATION DATE: 08/22/2001

REEL/FRAME: 012095/0244
NUMBER OF PAGES: 5

BRIEF: CAPITAL CONTRIBUTION AND ASSUMPTION AGREEMENT

ASSIGNOR:
CDDB, INC.

DOC DATE: 01/01/2000

ASSIGNEE:
ESCIENT TECHNOLOGIES, LLC
6325 DIGITAL WAY
INDIANAPOLIS, INDIANA 46278

SERIAL NUMBER: 09227086
PATENT NUMBER: 6304523

FILING DATE: 01/05/1999
ISSUE DATE: 10/16/2001

SERIAL NUMBER: 09226169
PATENT NUMBER:

FILING DATE: 01/07/1999
ISSUE DATE:

SERIAL NUMBER: 09478407
PATENT NUMBER:

FILING DATE: 01/06/2000
ISSUE DATE:

SERIAL NUMBER: 09002721
PATENT NUMBER:

FILING DATE: 01/05/1998
ISSUE DATE:

1617. 1001, 1002, 1003P, 1004

1618. 1001, 1001Cip

012095/0244 PAGE 2

SERIAL NUMBER: 60159102
PATENT NUMBER:

FILING DATE: 10/13/1999
ISSUE DATE:

SERIAL NUMBER: 09453023
PATENT NUMBER:

FILING DATE: 12/02/1999
ISSUE DATE:

ANTIONE ROYALL, EXAMINER
ASSIGNMENT DIVISION
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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
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Washington, D.C. 20231

OCTOBER 25, 2001

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101824082A

STAAS & HALSEY LLP
RICHARD A. GOLLHOFER
700 11TH STREET, NW, STE 500
WASHINGTON, DC 20001

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RECORDATION DATE: 08/22/2001

REEL/FRAME: 012095/0261
NUMBER OF PAGES: 4

BRIEF: CAPITAL CONTRIBUTION AND ASSUMPTION AGREEMENT

ASSIGNOR:
ESCIENT TECHNOLOGIES, LLC

DOC DATE: 01/01/2000

ASSIGNEE:
ESCIENT CONVERGENCE GROUP, INC.
6325 DIGITAL WAY
INDIANAPOLIS, INDIANA 46278

SERIAL NUMBER: 09227086
PATENT NUMBER: 6304523

FILING DATE: 01/05/1999
ISSUE DATE: 10/16/2001

SERIAL NUMBER: 09226169
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FILING DATE: 01/07/1999
ISSUE DATE:

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PATENT NUMBER:

FILING DATE: 01/06/2000
ISSUE DATE:

SERIAL NUMBER: 09002721
PATENT NUMBER:

FILING DATE: 01/05/1998
ISSUE DATE:

1617.1001, 1002, 1003A, 1004

1618.1001.1001C10

012095/0261 PAGE 2

SERIAL NUMBER: 60159102
PATENT NUMBER:

FILING DATE: 10/13/1999
ISSUE DATE:

SERIAL NUMBER: 09453023
PATENT NUMBER:

FILING DATE: 12/02/1999
ISSUE DATE:

DOROTHY RILEY, EXAMINER
ASSIGNMENT DIVISION
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OCTOBER 25, 2001

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RICHARD A. GOLLHOFFER
700 ELEVENTH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20001

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RECORDATION DATE: 08/22/2001

REEL/FRAME: 012095/0249

NUMBER OF PAGES: 2

BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

ESCIENT CONVERGENCE GROUP, INC.

DOC DATE: 08/29/2000

ASSIGNEE:

OPENGLOBE, INC.

6325 DIGITAL WAY

INDIANAPOLIS, INDIANA 46278

SERIAL NUMBER: 09227086

PATENT NUMBER: 6304523

FILING DATE: 01/05/1999

ISSUE DATE: 10/16/2001

SERIAL NUMBER: 09226169

PATENT NUMBER:

FILING DATE: 01/07/1999

ISSUE DATE:

SERIAL NUMBER: 09478407

PATENT NUMBER:

FILING DATE: 01/06/2000

ISSUE DATE:

SERIAL NUMBER: 09002721

PATENT NUMBER:

FILING DATE: 01/05/1998

ISSUE DATE:

1617.1001.1002.1003P.1004

1618.1001,1001UP

012095/0249 PAGE 2

SERIAL NUMBER: 60159102
PATENT NUMBER:

FILING DATE: 10/13/1999
ISSUE DATE:

SERIAL NUMBER: 09453023
PATENT NUMBER:

FILING DATE: 12/02/1999
ISSUE DATE:

SHARON LATIMER, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS



ASSET PURCHASE AGREEMENT

BY AND BETWEEN

DIGITAL NETWORKS NORTH AMERICA, INC., AS PURCHASER

AND

OPENGLOBE, INC., AS SELLER

DATED AS OF APRIL 22, 2003

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is entered into and made effective as of this 22nd day of April, 2003 by and between Digital Networks North America, Inc., a Delaware corporation ("Purchaser") and OpenGlobe, Inc., a Delaware corporation ("Seller").

WITNESSETH:

WHEREAS, Seller operates a business based in Indianapolis, Indiana that designs, develops and licenses convergence architectures and software for third party original equipment manufacturers of consumer electronics (the "Business") and Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Acquired Assets (as hereinafter defined) upon the terms and subject to the conditions set forth in this Agreement (the "Acquisition");

WHEREAS, Escient Convergence Corp., a Delaware corporation ("ECC"), operates a business based in Indianapolis, Indiana that outsources the development of, and markets and distributes, specific media management to dealers primarily in the CEDIA, PARA and HTSA distribution channels (the "ECC Business") and, Purchaser, in connection with its purchase of the Acquired Assets from Seller, desires to purchase from ECC, and ECC desires to sell to Purchaser, substantially all of the assets of ECC (the "ECC Acquired Assets"), upon the terms and conditions of a separate Asset Purchase Agreement being signed contemporaneously herewith by Purchaser and ECC (the "ECC Purchase Agreement"); and

WHEREAS, the Boards of Directors of Purchaser and Seller and the required shareholders of Seller have deemed it desirable, advisable and in the best interests of their respective corporations that the transactions contemplated by this Agreement and the Related Agreements (as hereinafter defined) be consummated and, in furtherance hereof and thereof, have approved this Agreement and the Related Agreements to which they are a party and the transactions contemplated hereby and thereby;

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

ARTICLE I. **DEFINITIONS**

For purposes of this Agreement, the following capitalized terms shall have the following meanings (such meanings applicable to both the singular and plural forms of the terms defined):

"Accounts Payable" means all of Seller's accounts payable which (i) are in existence on the Closing Date and (ii) were included in the February Statement of Net Assets or were incurred in the Ordinary Course of Business between the date of the February Statement of Net Assets

and the Closing Date; provided that, the term "Accounts Payable" shall not include any accounts payable of Seller with respect to any Person other than those listed on Schedule 2.04(iii).

"Accounts Receivable" means all accounts receivable, notes and all other amounts receivable by Seller from third parties, whether or not in the Ordinary Course of Business, and the benefit of all security for such accounts or debts, together with all unpaid financing thereof; excluding, however, any receivables owed to Seller by any of its Affiliates, any rights to refunds of Taxes, and any rights to refunds or payments with respect to any of the Excluded Assets.

"Accrued Expenses" means all accrued expenses and other liabilities and obligations of Seller which (i) are in existence on the Closing Date and (ii) were included in the February Statement of Net Assets or were incurred in the Ordinary Course of Business between the date of the February Statement of Net Assets and the Closing Date; provided that, the term "Accrued Expenses" shall not include any category of accrued expense, liability or obligation of Seller other than those categories listed on Schedule 2.04(v).

"Acquired Assets" means those assets of Seller being conveyed to Purchaser pursuant to this Agreement, as specified in Section 2.01 of this Agreement, including those assets set forth on Schedule 2.01 of this Agreement.

"Actions" has the meaning specified in Section 4.19.

"Additional Consideration" has the meaning specified in Section 2.06(c).

"Affiliate" means any Person that (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Seller or (ii) that, together with Seller, is a member of a controlled group (within the meaning of Code Section 1563(a) determined without regard to Code Sections 1563(a)(4) and 1563(e)(3)(C)). As used in clause (i) of this definition, "control" (including, its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (through ownership of twenty percent (20%) or more of outstanding voting securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" means this Asset Purchase Agreement.

"Asset Purchase Price" has the meaning specified in Section 2.05.

"Assigned Contracts" means those contracts, agreements and other arrangements (including the IP Licenses) listed on Schedule 1.01 of this Agreement. The fact that any Assigned Contract listed on Schedule 1.01 has not been formally assigned to Purchaser prior to the Closing shall not affect its treatment as an "Assigned Contract" under the provisions of this Agreement.

"Assignment and Assumption Agreement" has the meaning specified in Section 3.02(e).

"Assumed Liabilities" has the meaning specified in Section 2.04.

"Auditors" has the meaning specified in Section 2.06(a).

"Benefit Plans" has the meaning specified in Section 4.13(a).

"Bill of Sale" has the meaning specified in Section 3.02(d).

"Book Value Deficiency" has the meaning specified in Section 2.06(b).

"Book Value Surplus" has the meaning specified in Section 2.06(c).

"Business" has the meaning specified in the Recitals to this Agreement.

"Business Day" means any day, other than a Saturday or Sunday, on which commercial banks in the City of New York are open for business.

"Business IP" has the meaning specified in Section 2.01(f).

"CERCLA" means the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended.

"Claim" has the meaning specified in Section 7.01.

"Closing" has the meaning specified in Section 3.01.

"Closing Date" has the meaning specified in Section 3.01.

"Closing Refund" has the meaning specified in Section 2.06(b).

"Closing Statement of Net Assets" has the meaning specified in Section 2.06(a).

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"COBRA Beneficiaries" has the meaning specified in Section 6.03.

"COBRA Coverage" has the meaning specified in Section 6.03.

"Code" means the Internal Revenue Code of 1986, as amended.

"Consents to Assignment" has the meaning specified in Section 3.02(m).

"Consulting Agreement" has the meaning specified in Section 3.02(k).

"Covenant Not to Compete" has the meaning specified in Section 3.02(h).

"ECC" has the meaning specified in the Recitals to this Agreement.

"ECC Acquired Assets" has the meaning specified in the Recitals to this Agreement.

"ECC Business" has the meaning specified in the Recitals to this Agreement.

"ECC Purchase Agreement" has the meaning specified in the Recitals to this Agreement.

"Employment Agreements" has the meaning specified in Section 3.02(g).

"Encumbrances" means all liens (statutory or other), leases, mortgages, pledges, security interests, conditional sales agreements, charges, claims, options, easements, rights of way (other than easements of record) and other encumbrances of any kind or nature whatsoever.

"Environmental Requirements" means all past, present and future Laws, rules, regulations, ordinances, policies, guidance documents, approvals, plans, authorizations, licenses or permits issued by any Governmental Entity and all judicial, administrative, and regulatory decrees, judgments, and orders relating to human health, pollution, or protection of the environment (including ambient air, surface water, ground water, land surface or surface strata), including: (i) Laws relating to emissions, discharges, releases, or threatened releases of Hazardous Materials; (ii) Laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, recovery, transport or other handling of Hazardous Materials; (iii) CERCLA, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, RCRA, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, the Atomic Energy Act of 1954, as amended, and the Occupational Safety and Health Act, as amended; and (iv) any similar Law.

"Equipment and Machinery" means (i) all equipment, machinery, furniture, fixtures and improvements, tooling, spare parts, supplies, computer hardware and software and vehicles owned by Seller, (ii) any rights of Seller to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and sellers of any such item; and (iii) any related claims, credits, and rights of recovery with respect thereto.

"ERISA" has the meaning specified in Section 4.13(a).

"Escrow Agent" has the meaning specified in Section 3.04(c).

"Escrow Agreement" has the meaning specified in Section 7.04(b).

"Escrow Deposit" has the meaning specified in Section 3.04(c).

"Excluded Assets" has the meaning specified in Section 2.03.

"February Balance Sheet" has the meaning specified in Section 4.05.

"February Balance Sheet Date" has the meaning specified in Section 4.05.

"February Statement of Net Assets" has the meaning specified in Section 2.06(a).

"Files and Records" means all files, records and other information of Seller relating to the Business or any of the Acquired Assets, whether in hard copy or magnetic or other format,

including customer and supplier records, equipment maintenance records, plant plans, equipment warranty information, specifications and drawings, sales and advertising material, computer software, correspondence, manuals, studies, sales literature and promotional material and copies of financial and accounting records.

"Former Seller Employees" has the meaning specified in Section 6.02.

"Furniture, Equipment and Systems Letter Agreement" has the meaning specified in Section 3.02(n).

"GAAP" means generally accepted accounting principles in the United States of America, in effect from time to time, consistently applied.

"Governmental Entity" means any court, government agency, department, commission, board, bureau or instrumentality of the United States of America, any local, county, state, federal or political subdivision thereof, or any foreign governmental body of any kind.

"Guaranty" has the meaning specified in Section 3.03(m).

"Hazardous Materials" means (i) any substance that is or becomes defined as a "hazardous substance," "hazardous waste," "hazardous material," pollutant, or contaminant under any Environmental Requirements, including CERCLA, the Superfund Amendments and Reauthorization Act, as amended, RCRA, and any analogous and applicable Law; (ii) petroleum (including crude oil and any fraction thereof); and (iii) any natural or synthetic gas (whether in liquid or gaseous state).

"Indemnified Party" has the meaning specified in Section 7.03(a).

"Indemnifying Party" has the meaning specified in Section 7.03(a).

"Intangible Assets" means all intangible personal property rights of Seller, including, without limitation, the benefit of third party representations, warranties and guarantees, customer lists and related information (including telephone numbers, facsimile numbers, addresses and e-mail addresses), supplier lists and related information (including telephone numbers, facsimile numbers, addresses and e-mail addresses), business plans and strategies, referral sources, and all other intangible assets of Seller.

"Intech Letter Agreement" has the meaning specified in Section 3.02(f).

"Intellectual Property" means any and all rights in, arising out of, or associated therewith, with respect to the following: (i) all US, state and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof throughout the world; (ii) all inventions (whether patentable or not), invention disclosures, improvements, discoveries, designs (including hardware systems and services designs), methods, techniques, research and development, business plans and strategies, supplier lists, referral sources, trade secrets, proprietary information, processes or formulae, franchises, licenses, know how, technology, technical data and customer lists; (iii) all copyrights and works of authorship in any media, copyright registrations and applications therefor and all other rights

corresponding thereto throughout the world; (iv) all trade names, logos, source indicators, common law trademarks and service marks, trademark and service mark registrations and applications therefor and all goodwill associated therewith throughout the world; (v) all databases and data collections and all rights therein throughout the world; (vi) all computer software including all source code, object code, load module, business requirements, functional specifications, algorithms, display screens, layouts, firmware, applications, interfaces, development tools, files, records and data, all media on which any of the foregoing is recorded, all Web addresses, sites and domain names; (vii) any similar, corresponding or equivalent rights to any of the foregoing; (viii) all tangible embodiments of and documentation related to any of the foregoing; and (ix) all rights to bring an action at law or in equity for the infringement of any of the foregoing prior to the Closing Date, including the right to receive all proceeds and damages therefrom.

"Infringe" means to infringe, misappropriate, dilute, impair or otherwise violate.

"Inventories" means all inventories of Seller, wherever located, including all finished goods, works in process, raw materials, recyclable materials, spare parts, replacement parts and all other materials, supplies and other items of personal property to be used or consumed by Seller in the operation of the Business, and any rights of Seller or an Affiliate to the warranties received from suppliers and any related claims, credits, rights of recovery and setoff with respect to such Inventories, but only to the extent such rights are assignable.

"IP Licenses" has the meaning specified in Section 4.11(e).

"Key Employees" has the meaning specified in Section 3.02(g).

"Knowledge of Seller" and words of similar import means, collectively, the actual knowledge of Seller's officers and directors on the Closing Date.

"Law" means any local, county, state, federal, foreign or other law, statute, regulation, ordinance, rule, order, decree, judgment, consent decree, settlement agreement or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Entity.

"Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

"Licenses and Permits" means all governmental licenses, consents, orders, permits, franchises, certificates, approvals and authorizations that relate directly or indirectly to, or are necessary or desirable for, the conduct of the Business by Seller or the ownership and operation of the Acquired Assets by Seller.

"Material Adverse Effect", (x) when used with respect to Seller, the Business or the Acquired Assets, means any event, change, occurrence, condition or circumstance, including as a result of any adverse determination in any pending litigation against Seller or ECC, which has had or reasonably can be expected to have a materially adverse impact on (i) the validity of this

Agreement or the execution, delivery or performance of this Agreement by Seller or the consummation of the transactions contemplated hereby by Seller or otherwise on Seller's ability to transfer and convey the Acquired Assets as contemplated by this Agreement, (ii) on the Business and the ECC Business, taken as a whole, or (iii) on the Acquired Assets and the ECC Acquired Assets, taken as a whole, and, (y) when used with respect to Purchaser, means any event, change, occurrence, condition or circumstance, including as a result of any adverse determination in any pending litigation against Purchaser, which has had or reasonably can be expected to have a materially adverse impact on (i) the validity or this Agreement or the execution, delivery or performance of this Agreement by Purchaser or the consummation of the transactions contemplated hereby by Purchaser or otherwise on Purchaser's ability to purchase the Acquired Assets as contemplated by this Agreement, or (ii) the operations or financial condition of Purchaser and its subsidiaries, taken as a whole.

"Material Contracts" has the meaning specified in Section 4.16(a).

"Net Book Value" has the meaning specified in Section 2.06(a).

"New Purchaser Employees" has the meaning specified in Section 6.02 of this Agreement.

"Non-Competition and Option Agreements" has the meaning specified in Section 3.02(i).

"Non-Competition and Option Employees" has the meaning specified in Section 3.02(i).

"Notice of Dispute" has the meaning specified in Section 2.06(d).

"Option Agreements" has the meaning specified in Section 3.02(l).

"Option Employees" has the meaning specified in Section 3.02(l).

"Ordinary Course of Business" means any action taken by a Person if (i) such action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person; (ii) such action does not require authorization by the board of directors or the shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and (iii) such action is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as such Person.

"PTO" has the meaning specified in Section 4.11(a).

"Permitted Encumbrances" means (a) liens for Taxes (other than income Taxes) that are not yet due and payable, (b) workers', repairmen's, and similar liens imposed by Law that have been incurred in the Ordinary Course of Business consistent with past practices, relating to obligations as to which there is no material default on the part of Seller, (c) the terms and conditions of the Assigned Contracts, and (d) and certain other Encumbrances, in each case as set forth in Schedule 1.03 of this Agreement.

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, or unincorporated organization, or any Governmental Entity, officer, department, commission, board, bureau, or instrumentality thereof.

"Policy" has the meaning specified in Section 4.15(a).

"Purchaser" has the meaning specified in the first paragraph of this Agreement.

"Purchaser's 401(k) Plan" has the meaning specified in Section 6.04(a) of this Agreement.

"RCRA" means the Resource Conservation and Recovery Act, as amended.

"Registered IP" has the meaning specified in Section 4.11(a).

"Related Agreements" means the Bill of Sale, the Assignment and Assumption Agreement, the Intech Letter Agreement, the Escrow Agreement, and any other agreement by and among the parties hereto executed on or about the Closing Date relating to the subject matter hereof. When referenced with respect to a particular Person, the term "Related Agreements" means the Related Agreements to which such Person is a party.

"Seller" has the meaning specified in the first paragraph of this Agreement.

"Seller's 401(k) Plan" has the meaning specified in Section 6.04(a) of this Agreement.

"Survival Period" has the meaning specified in Section 7.04(a).

"Systems" has the meaning specified in Section 4.11(g).

"Tax" means any federal, state, local and foreign tax (including any excise tax, value added tax, occupancy tax, employment tax, unemployment tax, ad valorem tax, custom duty, transfer tax, or fee), levy, impost, fee, imposition, assessment or other governmental charge of any nature imposed upon a Person including any tax or governmental charge imposed upon any of the personal properties, real properties, tangible or intangible assets, income, receipts, payrolls, transactions, stock transfers, capital stock, net worth or franchises of a Person (including any sales, use, withholding or other tax which a Person is required to collect and/or pay over to any Governmental Entity), and all related additions to tax, penalties or interest thereon.

"Tax Return" means any return, report, information return, or other document (including all related and supporting information) filed or required to be filed with any Governmental Entity in connection with the determination, assessment, collection, or administration of any Tax.

"Third Party" means any Person other than the parties hereto and their respective successors, assigns and Affiliates.

"Thomson" has the meaning specified in Section 7.01(g).

"Thomson Agreements" has the meaning specified in Section 7.01(g).

"Thomson LOI" has the meaning specified in Section 7.01(g).

"Thomson MOU" has the meaning specified in Section 7.01(g).

"Thomson Prepaid Royalties" has the meaning specified in Section 7.01(g).

ARTICLE II. **PURCHASE AND SALE OF ASSETS**

Section 2.01. Purchase and Sale of Assets. Upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the representations and warranties contained herein, Purchaser hereby purchases, acquires and accepts from Seller, and Seller hereby sells, transfers, assigns, conveys and delivers to Purchaser, all of Seller's right, title and interest in and to all of the properties, assets, and interests in properties and assets (whether tangible or intangible) of any kind, nature, character and description owned by Seller on the Closing Date and relating to the Business, whether personal or other, whether accrued, contingent or other, and wherever situated, and whether or not reflected in any financial statement of Seller, other than the Excluded Assets (the "Acquired Assets"). The Acquired Assets shall include, but shall not be limited to, the following assets:

- (a) all Accounts Receivable other than any such Accounts Receivable due from Affiliates;
- (b) all Inventories;
- (c) all Equipment and Machinery;
- (d) all rights in, to and under the Assigned Contracts and all outstanding offers or solicitations made by or to Seller to enter into any contract to sell products or services in the Ordinary Course of Business of Seller;
- (e) all Intangible Assets (other than Intangible Assets included in the Excluded Assets);
- (f) all Intellectual Property owned or, subject to the terms and conditions of the applicable IP Licenses, used by Seller that relates to the Business (the "Business IP");
- (g) all Files and Records (other than Files and Records included in the Excluded Assets);
- (h) all Licenses and Permits, to the extent assignable without any consents or approvals of any Governmental Entity;
- (i) all claims of Seller against third parties relating to the Acquired Assets, whether choate or inchoate, known or unknown, contingent or non-contingent; and
- (j) the goodwill of the Business.

A list setting forth all material items of tangible personal property included in the Acquired Assets is attached hereto as Schedule 2.01.

Section 2.02. Intentionally Deleted.

Section 2.03. Certain Excluded Assets. Notwithstanding any other provision of this Agreement to the contrary, the Acquired Assets shall not include the following assets of Seller, which shall remain the sole property of Seller (collectively, the "Excluded Assets"):

- (a) all cash on hand or on deposit;
- (b) all rights of Seller to deposits, prepaid expenses, security deposits, claims for refunds and rights to offset in respect thereof;
- (c) all financial statements, Tax Returns and other Tax records and related information of Seller;
- (d) all insurance policies owned or maintained by Seller and all rights to make claims thereunder;
- (e) Seller's franchise to a corporation, stock transfer records, minute books and corporate seal (if any);
- (f) all shares of capital stock of Seller held in treasury (if any);
- (g) all personnel records and other records (if any) that Seller is, in each case, required by Law to retain in its possession;
- (h) all rights in, to and under any contracts, licenses or leases to which Seller is a party (other than the Assigned Contracts);
- (i) all Accounts Receivable and notes receivable due from Affiliates of Seller;
- (j) all rights, causes of action and claims of Seller under or pursuant to the terms and conditions of this Agreement or any of the Related Agreements; and
- (k) all other properties and assets expressly designated on Schedule 2.03(k) as Excluded Assets.

Notwithstanding anything in this Section 2.03 to the contrary, after the Closing, Purchaser shall be entitled (except as prohibited by applicable Law), upon reasonable advance notice and at reasonable times, to inspect and copy any records and information retained by Seller which are reasonably necessary for the ongoing operation of the Business.

Section 2.04. No Assumption of Liabilities. Purchaser shall not assume, pay, satisfy, discharge, perform or be responsible for in any manner, and will not, by virtue of the execution and delivery of this Agreement, any Related Agreement or any other agreement, instrument or document delivered pursuant to or in connection with this Agreement or any

Related Agreement (or otherwise by reason of or in connection with the consummation of the transactions contemplated hereby or thereby) be deemed to have assumed or to have agreed to pay, satisfy, discharge or perform or be responsible for in any manner, any liabilities, obligations or commitments of Seller of any nature whatsoever, whether direct or indirect, known or unknown, choate or inchoate, absolute, fixed, contingent or otherwise and whether or not disclosed to Purchaser, including, without limitation, any indebtedness for borrowed money or any related interest charges, other than (a) as specifically set forth in this Agreement or any Related Agreement and (b) the following obligations and liabilities, for which Purchaser hereby assumes and agrees to be solely responsible for on and after the Closing Date (collectively, the liabilities and obligations specified in the foregoing clauses (a) and (b) are referred to as the "Assumed Liabilities"):

(i) All liabilities and obligations of Seller under the provisions of the Assigned Contracts (and any guarantees thereof by Scott A. Jones, all such guarantees being specified in Schedule 2.04(i));

(ii) All customer and original equipment manufacturer warranty liabilities and obligations of Seller with respect to Seller's sale of products or services (which are related to the Acquired Assets) prior to the Closing;

(iii) All Accounts Payable;

(iv) All COBRA, severance and accrued vacation obligations that Purchaser agrees to assume pursuant to Sections 6.02, 6.03 and 6.04 of this Agreement; and

(v) All Accrued Expenses.

Section 2.05. Asset Purchase Price. The aggregate consideration payable by Purchaser in consideration of the sale, transfer, assignment, conveyance and delivery by Seller of the Acquired Assets, in addition to the assumption of the Assumed Liabilities, shall be the sum of six million United States dollars (\$6,000,000) (the "Asset Purchase Price"), which Purchaser shall pay to the parties specified in, and in accordance with, Article III. The Asset Purchase Price is subject to adjustment in accordance with Section 2.06.

Section 2.06. Post-Closing Adjustment.

(a) Within thirty (30) days after the Closing Date, Seller shall furnish or cause its independent accountants (the "Auditors") to furnish to Purchaser, at Seller's sole cost and expense, an unaudited statement of assets acquired from Seller and liabilities assumed from Seller (the difference between the two being referred to hereinafter as the "Net Book Value") as of the Closing Date (the "Closing Statement of Net Assets"), together with a written notice stating whether there is a Book Value Deficiency or Book Value Surplus, as each term is defined below, and, if applicable, specifying the amount thereof. The Closing Statement of Net Assets shall be prepared in a manner consistent with the February Balance Sheet and GAAP as applied in the preparation of the February Balance Sheet, except that, as reflected in the February Statement of Net Assets attached hereto as Exhibit 2.06 (the "February Statement of Net Assets"), (i) only the Acquired

Assets shall be included as assets and (ii) only the Assumed Liabilities shall be included as liabilities, and in the case of the foregoing clauses (i) and (ii) only to the extent they constitute assets or liabilities in accordance with GAAP as applied in the preparation of the February Balance Sheet. Notwithstanding any of the foregoing to the contrary, for purposes of preparing the Closing Statement of Net Assets, no amounts shall be included as liabilities with respect to severance or termination payments due to any employees, under any employment agreement or otherwise, as a result of the termination of their employment with Seller or Purchaser in connection with the transactions contemplated hereby. After the Closing, Purchaser shall allow Seller and the Auditors access to such books and records that were transferred to Purchaser by Seller at the Closing as Seller or the Auditors may reasonably require for the preparation of the Closing Statement of Net Assets.

(b) If the Net Book Value of Seller reflected on the Closing Statement of Net Assets is less than the Net Book Value of Seller reflected on the February Statement of Net Assets (the amount of such difference being the "Book Value Deficiency"), Purchaser shall be entitled to obtain payment of an amount of cash equal to the Book Value Deficiency from the Escrow Deposit (the "Closing Refund"), in accordance with the terms of the Escrow Agreement, in complete satisfaction and discharge of Seller's obligation to pay any such Closing Refund.

(c) If the Net Book Value reflected on the Closing Statement of Net Assets is greater than the Net Book Value of Seller reflected on the February Statement of Net Assets (the amount of such difference being the "Book Value Surplus"), Purchaser shall pay additional consideration (the "Additional Consideration") to Seller, in cash, in an amount equal to the Book Value Surplus.

(d) If Purchaser disputes any item(s) on the Closing Statement of Net Assets, Purchaser shall notify Seller in writing thereof (the "Notice of Dispute") within thirty (30) days after Seller's or the Auditor's delivery of the Closing Statement of Net Assets to Purchaser, which Notice of Dispute shall set forth in reasonable detail the items in dispute, the basis for dispute and the amounts being disputed. If Purchaser fails to deliver a Notice of Dispute within the aforesaid thirty (30)-day period, the Closing Statement of Net Assets shall become final and binding upon, and non-appealable by, all Parties at the end of such period and any Closing Refund or Additional Consideration reflected by the Closing Statement of Net Assets shall be promptly paid or otherwise satisfied and discharged pursuant to Section 2.06(b) or Section 2.06(c), as applicable.

(e) If Purchaser timely delivers a Notice of Dispute to Seller, Purchaser and Seller shall attempt in good faith to resolve such dispute(s). If Purchaser and Seller are unable to resolve any disputed item(s) within ten (10) Business Days after Seller's receipt of the Notice of Dispute, such disputed item(s) shall be submitted within five (5) days after the expiration of such ten (10) Business Day period to one of the "Big 4" accounting firms which is independent of Purchaser and Seller and not heretofore engaged by any party, chosen with the mutual consent of Purchaser and Seller. This accounting firm shall be instructed to resolve such disputed term(s) based upon the presentations of Purchaser and Seller, and in accordance with the terms and conditions of this Agreement, within

twenty (20) days after the initial submission as aforesaid. The resolution of disputes by the accounting firm so selected shall be set forth in writing and shall become final and binding upon, and non-appealable by, all Parties, and the Closing Statement of Net Assets, adjusted to reflect the impact, if any, thereon as a result of the resolution of such disputes, shall become final and binding upon the date of such resolution. The costs and expenses of such resolution, including, without limitation, the costs and fees of the efforts of the accounting firm retained to resolve such dispute, shall be paid by the losing Party.

Section 2.07. Subsequent Documentation. At any time and from time to time after the Closing Date, Seller shall, upon the request of Purchaser, and Purchaser shall, upon the request of Seller, without any additional consideration, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets, (b) the assumption of the Assumed Liabilities, (c) the payment of any Closing Refund or Additional Consideration, (d) the performance by the parties of any of their other respective obligations under this Agreement or any of the Related Agreements, and (e) the purposes and intent of this Agreement and the Related Agreements.

Section 2.08. Allocation of the Purchase Price. Purchaser and Seller agree that the Asset Purchase Price shall be allocated to the Acquired Assets as set forth on Schedule 2.08 and that they shall file Internal Revenue Service Form 8564 (and/or other appropriate Tax Returns) with the applicable Taxing authorities, and shall not file any amendments or take any action inconsistent with the foregoing in any audit, refund claim, Tax Return, or any other administration or judicial proceeding, pursuant to Section 1060 of the Code and the underlying Treasury Regulations promulgated thereunder. Each of the parties hereto shall make their respective Tax Returns (and any amendments thereof) available for inspection by the other parties hereto for the purpose of verifying compliance with this Section 2.08.

Section 2.09. Taxes. Seller shall pay all Taxes arising out of (a) its ownership, possession and use of the Excluded Assets; (b) its ownership, possession and use of the Acquired Assets prior to the Closing Date, including all income and personal property Taxes due and payable (or assessed for periods) on or before the Closing Date; (c) gains from the sale of the Acquired Assets to Purchaser; and (d) the transfer, recording, sales and use Taxes arising out of the sale or transfer of the Acquired Assets pursuant to this Agreement or the other agreements and instruments contemplated hereby. Purchaser shall pay all Taxes arising out of its ownership, possession, use and subsequent transfer of the Acquired Assets on and after the Closing Date.

Section 2.10. Fair Consideration. Each of the parties acknowledges and agrees that the consideration provided for in this Article II represents fair consideration and reasonable equivalent value for (a) the sale and transfer of the Acquired Assets and (b) the transactions, covenants and agreements set forth in this Agreement and the Related Agreements, which consideration was agreed upon as the result of arm's-length and good-faith negotiations among the parties and their respective representatives.

ARTICLE III. **CLOSING**

Section 3.01. **Closing Date.** Except as otherwise provided for in this Agreement, the closing of the transactions contemplated by this Agreement and the Related Agreements (the "**Closing**") is being held simultaneously with the execution and delivery of this Agreement at the offices of Ice Miller, One American Square, 34th Floor, Indianapolis, Indiana, on April 22, 2003 (the "**Closing Date**"), it being agreed and understood between the parties hereto that the receipt by Purchaser of any portion of the Asset Purchase Price specified in **Section 3.04** after the Closing Date pursuant to wire transfer instructions dated no later than the Closing Date shall be deemed to have been received by Purchaser on the Closing Date. All of the agreements, documents, certificates and instruments to be delivered by each party at the Closing shall be deemed and acknowledged by the parties hereto to have been delivered simultaneously on their respective dates.

Section 3.02. **Deliveries by Seller.** Seller is delivering (or is causing to be delivered) to Purchaser, simultaneously with the execution of this Agreement, possession of all of the Acquired Assets and is delivering (or is causing to be delivered) to Purchaser originals or copies, if specified, of the following agreements, documents, certificates, instruments and other items:

(a) Copies of the corporate resolutions adopted by the Board of Directors and the shareholders of Seller authorizing and approving the execution and delivery of this Agreement, the Related Agreements and the other agreements and instruments contemplated hereby and thereby, and the consummation of the transactions contemplated hereby and thereby, certified to be true, complete, correct and in full force and effect as of the Closing Date by the corporate Secretary of Seller;

(b) A Certificate of Good Standing of Seller issued by the Secretary of State of Delaware, dated within ten (10) days of the Closing Date;

(c) A copy of the Certificate of Incorporation of Seller, including all amendments thereto, certified as true, complete and correct as of a date within ten (10) days of the Closing Date by the Secretary of State of Delaware, and a copy of the Bylaws of Seller, including all amendments thereto, certified as true, complete, correct and in full force and effect as of the Closing Date by the corporate Secretary of Seller;

(d) A Bill of Sale executed by Seller transferring all of the Acquired Assets to Purchaser (the "**Bill of Sale**"), a copy of which is attached hereto as **Exhibit 3.02(d)**;

(e) A counterpart of the Assignment and Assumption Agreement with respect to the Assigned Contracts and the assigned Licenses and Permits by and between Purchaser and Seller (the "**Assignment and Assumption Agreement**") executed by Seller, a copy of which is attached hereto as **Exhibit 3.02(e)**;

(f) A counterpart of the Intech Letter Agreement by and among Purchaser, Escient Technologies, LLC and INTECH Partners One, LLC (the "**Intech Letter Agreement**") executed by Escient Technologies, LLC, Scott A. Jones and INTECH Partners One, LLC, a copy of which is attached hereto as **Exhibit 3.02(f)**;

(g) Counterparts to Employment Agreements executed by and between Purchaser and each of those key employees (the "Key Employees") identified by Purchaser on Schedule 3.02(g) attached hereto (the "Employment Agreements"), executed by each of the Key Employees;

(h) A counterpart of the Covenant Not to Compete by and between Purchaser and Scott A. Jones (the "Covenant Not to Compete") executed by Jones, a copy of which is attached hereto as Exhibit 3.02(h);

(i) Counterparts to the Non-Competition and Option Agreements (the "Non-Competition and Option Agreements") by and between D&M Holdings Inc. and each of those employees identified on Schedule 3.02(i) attached hereto (the "Non-Competition and Option Employees") executed by each of the Non-Competition and Option Employees;

(j) Documentation from National City Bank N.A. releasing its security interest in the Acquired Assets;

(k) A counterpart to the Consulting Agreement executed by and between Purchaser and Thomas Gabbert (the "Consulting Agreement"), executed by Thomas Gabbert, a copy of which is attached hereto as Exhibit 3.02(k);

(l) A counterpart to the Option Agreements (the "Option Agreements") by and between D&M Holdings Inc. and those employees identified on Schedule 3.02(l) (the "Option Employees") executed by each such employee;

(m) Copies of each of those consents, waivers, approvals, authorizations or orders required to be obtained by Seller prior to or simultaneously with the Closing for the assignment to and assumption by Purchaser of the Assigned Contracts (the "Consents to Assignment") executed by Seller and each of the Persons identified on Schedule 3.02(m) attached hereto;

(n) A counterpart to the Furniture and Systems Letter Agreement by and between Escient Technologies, LLC and Purchaser (the "Furniture, Equipment and Systems Letter Agreement") executed by Escient Technologies, LLC, a copy of which is attached hereto as Exhibit 3.02(n); and

(o) A counterpart to the Escrow Agreement executed by Seller, OG and the Escrow Agent.

Section 3.03. Deliveries by Purchaser. In addition to the payment of the Asset Purchase Price, Purchaser is delivering (or is causing to be delivered) to Seller simultaneously with the execution of this Agreement, originals or copies, if specified, of the following agreements, documents, certificates, instruments and other items:

(a) Copies of the corporate resolutions adopted by the Board of Directors of Purchaser authorizing and approving the execution and delivery of this Agreement, the Related Agreements, and the other agreements and instruments contemplated hereby and

thereby and the consummation of the transactions contemplated hereby and thereby, certified to be true, complete, correct and in full force and effect as of the Closing Date by the corporate Secretary of Purchaser;

(b) A Certificate of Good Standing of Purchaser issued by the Secretary of State of Delaware, dated within ten (10) days of the Closing Date;

(c) A copy of the Certificate of Incorporation of Purchaser, including all amendments thereto, certified as true, complete and correct as of a date within ten (10) days of the Closing Date by the Secretary of State of Delaware, and a copy of the Bylaws of Purchaser, including all amendments thereto, certified as true, complete, correct and in full force and effect as of the Closing Date by the corporate Secretary of Purchaser;

(d) A counterpart of the Assignment and Assumption Agreement executed by Purchaser;

(e) A counterpart of the Intech Letter Agreement executed by Purchaser and INTECH Partners One, LLC;

(f) A counterpart of the Employment Agreements executed by Purchaser;

(g) A counterpart of the Covenant Not to Compete executed by Purchaser;

(h) Counterparts of the Non-Competition and Option Agreement executed by Purchaser;

(i) A counterpart to the Consulting Agreement executed by Purchaser;

(j) A counterpart to the Option Agreement executed by Purchaser;

(k) A counterpart to the Furniture and Systems Letter Agreement executed by Purchaser;

(l) A counterpart to the Escrow Agreement executed by Purchaser and Escrow Agent; and

(m) A guaranty (the "Guaranty") of D&M Holdings, Inc. ("D&M") executed by D&M, a copy of which is attached hereto as Exhibit 3.03(m).

Section 3.04. Payment of Asset Purchase Price. Simultaneously with the execution and delivery of this Agreement, Purchaser shall pay the Asset Purchase Price as follows:

(a) four million seven hundred thousand United States dollars (\$4,700,000) to National City Bank N.A. by bank cashiers check or wire transfer of immediately available funds to an account designated by National City's written instructions to Purchaser prior to the Closing;

(b) five hundred thousand dollars (\$500,000) to Seller by bank cashiers check or wire transfer of immediately available funds to an account designated by Seller's written instructions to Purchaser prior to the Closing; and

(c) eight hundred thousand United States dollars (\$800,000) (hereinafter referred to as the "Escrow Deposit") to National City Bank, N.A., as Escrow Agent (the "Escrow Agent") by bank cashiers check or wire transfer of immediately available funds to an account designated by the Escrow Agent's written instructions to Purchaser prior to the Closing, such Escrow Deposit to be held in escrow in accordance with the terms and conditions of the Escrow Agreement.

Section 3.05. Possession of Acquired Assets. Immediately following the Closing on the Closing Date, Seller shall take all actions which are required or reasonably requested by Purchaser to put Purchaser in full possession and control of all of the Acquired Assets.

ARTICLE IV. **REPRESENTATIONS AND WARRANTIES OF SELLER**

As a material inducement to Purchaser to enter into this Agreement and the Related Agreements and to consummate the transactions contemplated hereby and thereby, Seller represents and warrants to Purchaser as follows:

Section 4.01. Organization; Power. Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Seller is duly qualified and in good standing, if applicable, as a foreign corporation in each jurisdiction where the character of the property owned or leased by it or the nature of its activities makes such qualification necessary to carry on its business as now conducted. Seller has all requisite corporate power and authority to own, lease and operate the Acquired Assets and to carry on the Business as it is now conducted.

Section 4.02. Authorization; Validity. Seller has all requisite corporate power and authority to enter into, execute and deliver this Agreement and the Related Agreements, to consummate the transactions contemplated by this Agreement and the Related Agreements, and to comply with and fulfill the terms and conditions of this Agreement and the Related Agreements. The execution and delivery of this Agreement and the Related Agreements by Seller and the consummation by Seller of the transactions contemplated by this Agreement and the Related Agreements have been duly authorized by all necessary corporate action on the part of Seller and the shareholders of Seller, and no other corporate proceedings on the part of Seller or any shareholders of Seller are necessary to authorize the execution, delivery and performance of this Agreement and the Related Agreements. Seller has duly executed this Agreement and each of the Related Agreements to which it is a party and such agreements constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms and conditions, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles.

Section 4.03. No Conflict or Violation. The execution, delivery and performance of this Agreement and the Related Agreements by Seller, and consummation of the transactions hereby, does not and will not, in any material respect (a) violate or conflict with any provision of the Certificate of Incorporation, Bylaws or other corporate governing documents of Seller; (b) violate or conflict with any provision of Law applicable to Seller or the Business; (c) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust, indenture, license, consent order or other instrument or obligation to which Seller is a party, or by which Seller is bound or any of the Acquired Assets may be bound; or (d) result in the imposition of any Encumbrance (other than Permitted Encumbrances) on any of the Acquired Assets.

Section 4.04. Consents and Approvals. No governmental or other registration, filing, application, notice, transfer, consent, approval, order, qualification or waiver is required under any applicable Law to be obtained from or filed with any Governmental Entity or other Person by Seller by virtue of the execution, delivery and performance of this Agreement and the Related Agreements by Seller or the consummation by Seller of the transactions contemplated hereby except (a) as set forth on Schedule 4.04, or (b) such consents, approvals, and filings, the failure to obtain or make the same would not, individually or in the aggregate, have a Material Adverse Effect with respect to Seller, the Business or the Acquired Assets. Except as set forth in Schedule 4.16(c), all consents, waivers, approvals, authorizations or orders from any Governmental Entity or any other Person necessary for Seller to consummate the transactions contemplated by this Agreement and the Related Agreements have been obtained by Seller. Notwithstanding any of the foregoing, subject to the indemnification obligation of Seller set forth in Section 6.01(f), Seller and Purchaser have agreed that no attempt will be made by Seller or Purchaser to comply with the Indiana Uniform Commercial Code – Bulk Sales Act.

Section 4.05. Financial Statements. Attached hereto as Schedule 4.05 are true and complete copies of (a) the unaudited balance sheet of Seller as of December 31, 2002 and the related statements of operations, changes in shareholders' equity and cash flows for the year then ended, and (b) the unaudited balance sheet (the "February Balance Sheet") of Seller as of February 28, 2003 (the "February Balance Sheet Date"), and the related statements of operations, changes in shareholders' equity and cash flow for the period then ended. All financial statements referred to in this Section 4.05 (the "Financial Statements") have been prepared in accordance with GAAP on a consistent basis and fairly present the financial position of Seller as of the respective dates thereof and the results of Seller's operations, cash flows and changes in shareholders' equity for the periods then ended.

Section 4.06. Absence of Certain Changes or Events. Except as set forth on Schedule 4.06, since the February Balance Sheet Date, Seller has operated the Business in the Ordinary Course of Business and there has not been any:

(a) sale, assignment or transfer of any material assets or properties of Seller, except in the Ordinary Course of Business;

(b) incurrence of any indebtedness for borrowed money except to National City Bank N.A. in an aggregate amount not to exceed \$12,500,000;

(c) creation, assumption or other incurrence of any Encumbrance on any of the Acquired Assets (except for the Permitted Encumbrances);

(d) execution and delivery, waiver, amendment, cancellation or termination of any contract, license or other instrument material to the Business, or any relinquishment of any rights thereunder;

(e) failure to pay, discharge or satisfy when due any liabilities of Seller with regard to the Acquired Assets;

(f) material capital expenditure in connection with the Business;

(g) material change in accounting methods or practices of Seller;

(h) material damage, destruction or loss (whether or not covered by insurance) affecting the Acquired Assets or the Business;

(i) material increase in any compensation paid or payable to employees of Seller or material change in any employee benefits provided to employees of Seller; or

(j) other event or condition of any character (whether or not covered by insurance) which has had a Material Adverse Effect with respect to Seller, the Business or the Acquired Assets.

Section 4.07. Tax Matters. Except as set forth on Schedule 4.07, Seller has accurately, duly and timely filed all Tax Returns required to have been filed with any federal, state, local or foreign Taxing authority on or before the Closing Date, and has timely paid all Taxes due and payable by Seller on or before the Closing Date, whether or not shown on such Tax Returns. Seller has set up reserves or accruals on the February Balance Sheet which are adequate to reflect the accrual of all Taxes for all periods through the Closing Date. Except as set forth on Schedule 4.07, no Taxing authority has asserted or, to the Knowledge of Seller, threatened any claim against Seller for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion or proposed any material adjustments relating to the Tax Returns. Except as set forth on Schedule 4.07, Seller has made all withholdings and payments of Taxes required to be made by it under all applicable Laws and regulations, including withholdings and payments with respect to sales and use Taxes and withholdings or payments with respect to amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code. The transactions contemplated by this Agreement are not subject to the Tax withholding provisions of Section 3406 of the Code or of Sub-Chapter A or Chapter 3 of the Code, or of any other comparable provision of Law. Seller has not entered into any transfer pricing agreement or other like arrangements with respect to any foreign jurisdiction. Nothing in this Section 4.07 shall be construed to imply that Purchaser will assume any Tax Liability arising through the Closing Date.

Section 4.08. Absence of Liabilities. Seller has no material liabilities or obligations other than (a) those liabilities and obligations reflected on the February Balance Sheet, (b) those liabilities and obligations incurred in the Ordinary Course of Business since the February

Balance Sheet Date, (c) liabilities under contracts, licenses and leases to which Seller is a party, and (d) those liabilities and obligations set forth on Schedule 4.08.

Section 4.09. Equipment and Machinery. Each material item of Equipment and Machinery is in good operating condition and repair (ordinary wear and tear excepted) and is sufficient for the operation of the Business as presently conducted.

Section 4.10. Inventories. All items of Inventory included in the Acquired Assets consist of a quality and quantity usable and saleable in the Ordinary Course of Business. All Inventory (other than Inventory in transit in the Ordinary Course of Business) is located at the primary office of the Business located in Indianapolis, Indiana.

Section 4.11. Intellectual Property.

(a) Schedule 4.11(a) contains a complete and accurate list of all registrations, issuances or applications relating to any Business IP that is owned by Seller, including without limitation, any domain name, patent, registered trademark or registered copyright ("Registered IP") and, all Claims pending before any court or tribunal (including the United States Patent and Trademark Office (the "PTO") or equivalent authority anywhere in the world) related to or involving any Business IP that is owned by Seller.

(b) Except as set forth on Schedule 4.11(b), there are no pending or, to the Knowledge of Seller, threatened Actions, or outstanding decrees, orders or judgments that question, challenge, encumber, impair, terminate, nullify or restrict in any manner the use, transfer, ownership, validity, enforceability or licensing of any of the Business IP that is owned by Seller. Except as set forth on Schedule 4.11(b), (i) all Business IP owned by Seller and all IP Licenses are assignable to Purchaser in accordance with the transactions contemplated by this Agreement without the consent or approval of any Person and (ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not impair, limit, terminate or nullify, or cause any Encumbrance on, any rights relating to the Business IP or the IP Licenses, or cause any payments to be due with respect thereto, except for the royalties and payments due and payable thereunder in the Ordinary Course of Business of Seller.

(c) Except as set forth on Schedule 4.11(c), each item of Registered IP is registered and all necessary registration, maintenance and renewal fees currently due in connection with the registration of such Registered IP have been made and all necessary documents, recordations and certificates in connection with such Registered IP have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such registrations through sixty (60) days after the Closing Date. Except as set forth on Schedule 4.11(c), there are no actions that must be taken within the sixty (60) day period following the Closing Date, including, without limitation, the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining or renewing any Registered IP. Except as set forth on Schedule 4.11(c), Seller has not acquired from any Person any Business IP that is material to the Business. Seller has taken all commercially reasonable and appropriate

measures to protect, police, register and maintain all material Business IP owned by Seller.

(d) Except as set forth on Schedule 4.11(d), (i) Seller owns and has good title to, or has a valid and transferable license to, each item of Business IP which is material to the Business, free and clear of all Encumbrances (excluding Encumbrances incurred in connection with the IP Licenses) and all adverse ownership claims of current and former employees and contractors of Seller and (ii) all of the material Business IP is currently subsisting and, to the Knowledge of Seller, is valid and enforceable.

(e) Schedule 4.11(e) contains a true, complete and accurate list of all contracts, licenses and agreements to which Seller is a party (i) with respect to any Business IP which was licensed or transferred by Seller to any third party; (ii) pursuant to which a third party has licensed or transferred any Business IP to Seller (other than shrink-wrap licenses and other agreements for the use of currently available off-the-shelf software); or (iii) that otherwise relate to the use or ownership of any of the Business IP (collectively, the "IP Licenses").

(f) Except as set forth on Schedule 4.11(f), to the Knowledge of Seller, neither the conduct of the Business, the use or license of any Business IP, nor the development, manufacture, marketing, license, sale nor use of any product, technology or service currently developed, manufactured, marketed, licensed, used or sold by Seller Infringes upon any Intellectual Property of any third party and, to the Knowledge of Seller, none of the Business IP is being infringed by any third party.

(g) Except as disclosed on Schedule 4.11(g), Seller has taken all commercially reasonable measures (including complying in all material respects with all applicable Laws) (i) to ensure the security, accuracy, integrity and enforceability of all transactions executed through its systems, Internet sites, software, databases and networks, in each case, as used in the day to day operations of the Business ("Systems") and (ii) to protect all information contained on its Systems from any unauthorized, illegal or improper use, access, interruption or modification.

Section 4.12. Labor Relations. Except as set forth in Schedule 4.12, (a) Seller is not a party to any collective bargaining agreement or other contract or agreement with any labor organization or other representative of any employees of Seller or Persons providing services to Seller, nor is any such contract or agreement presently being negotiated; (b) Seller is not a party to any employment agreement or consulting agreement with any Person, nor is any such contract or agreement presently being negotiated; (c) there is no unfair labor practice charge or complaint pending or, to the knowledge of Seller, threatened against or otherwise affecting Seller; (d) there is no labor strike, slowdown, work stoppage, dispute, lockout or other labor controversy in effect or, to the knowledge of Seller, threatened against or otherwise affecting Seller, and Seller has not experienced any such labor controversy within the past five years; (e) no representation question exists or has been raised respecting any of the employees of Seller within the past five years, nor to the knowledge of Seller are there any campaigns being conducted to solicit cards from employees to authorize representation by any labor organization; (f) no action, suit, complaint, charge, arbitration, inquiry, proceeding or investigation by or before any court, governmental

agency, administrative agency or commission brought by or on behalf of any employee, prospective employee, former employee, retiree, labor organization or other representative of the employees of Seller is pending or, to the knowledge of Seller, threatened against Seller; (g) no grievance is pending or, to the knowledge of Seller, threatened, which, if adversely decided, could have a Material Adverse Effect on Seller; (h) Seller is not a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Entity relating to employees or employment practices; (i) Seller is in compliance in all material respects with all applicable Laws, agreements, contracts, and policies relating to employment, employment practices, wages, hours, terms and conditions of employment; (j) except for accrued vacation liabilities, which shall be assumed in full by Purchaser, Seller has paid in full to all employees all wages, salaries, commissions, bonuses, benefits and other compensation due to such employees or otherwise arising under any policy, practice, agreement, plan, or program of Seller or any applicable Law; (k) Seller is not liable for any severance pay or other payments to any employee or former employee arising from the termination of employment, nor will Seller have any liability under any benefit or severance policy, practice, agreement, plan, or program which exists or arises, or may be deemed to exist or arise, under any applicable Law or otherwise, as a result of or in connection with the transactions contemplated hereunder or as a result of the termination of any Persons employed by Seller on or prior to the Closing Date; (l) each individual who is treated by Seller as an independent contractor is properly so treated under applicable Law; (m) Seller has not closed any plant or facility, effectuated any layoffs of employees or implemented any early retirement, separation or window program within the past five years, nor has Seller planned or announced any such action or program for the future; (n) Seller is in compliance with its obligations pursuant to the Worker Adjustment and Retraining Notification Act of 1988, and all other notification and bargaining obligations arising under any collective bargaining agreement, Law or otherwise.

Section 4.13. Employee Benefits.

(a) Schedule 4.13 contains a list of each "employee pension benefit plan" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974 and the regulations adopted pursuant thereto ("ERISA")), "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), vacation, pension, stock option, stock purchase, deferred compensation, severance, and other fringe benefit plan, policy, agreement, program or arrangement maintained, contributed to, or required to be maintained or contributed to by Seller in which any present or former employee or their dependents participate (together with any employment or change in control agreements, programs or policies, collectively referred to hereinafter as the "Benefit Plans"). Seller has delivered or made available to Purchaser true, complete and correct copies of (i) each Benefit Plan (or, in the case of any unwritten Benefit Plans, descriptions thereof) and (ii) the most recent summary plan description for each Benefit Plan (if any such description was required).

(b) Seller has no, and in the five calendar years prior to 2003 has not had any, obligation to contribute to (or any other liability, including current or potential withdrawal liability, with respect to) and has never contributed to any "multiemployer plan" (as defined in Section 3(37) and Section 4001(a)(3) of ERISA).

(c) Seller does not maintain nor has it any obligation to contribute to (or any other liability with respect to) any plan or arrangement whether or not terminated, which provides medical, health, life insurance or other welfare-type benefits for current or future retired or terminated employees (except for limited continued medical benefit coverage required to be provided under Section 4980B of the Code or as required under applicable state Law).

(d) Seller does not maintain nor contribute to or have any liability under (or with respect to) any employee plan which is a tax-qualified "defined benefit plan" (as defined in Section 3(35) of ERISA), whether or not terminated.

(e) (i) Each Benefit Plan has been established and administered in material compliance with its terms and the applicable provisions of ERISA, the Code and other applicable Laws; (ii) each Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that such Benefit Plan is qualified under the Code and nothing has occurred that could reasonably be expected to cause the loss of such qualification; and (iii) no event has occurred and no condition exists that would subject the Seller or its Affiliates, either directly or by reason of their affiliation with any member of their "Controlled Group" (defined as any organization which is a member of a controlled group of organizations within the meaning of Code Sections 414(b), (c), (m) or (o)), to any tax, fine, lien, penalty or other liability imposed by ERISA, the Code or other applicable laws, rules and regulations.

(f) Except as set forth in Schedule 4.13, no Benefit Plan exists that could result in the payment to any Former Seller Employee of any money or other property (including any severance payments, bonus or other compensation) or in the acceleration of any other rights or benefits to any Former Seller Employee as a result of the transactions contemplated herein.

Section 4.14. Licenses and Permits. Schedule 4.14 sets forth a list, together with a brief description of type, duration and status, of each material License and Permit issued to Seller. Seller has made true and complete copies of all Licenses and Permits available to Purchaser. Seller is in compliance in all material respects with all terms, conditions and requirements of all Licenses and Permits and no proceeding is pending or, to the Knowledge of Seller, threatened relating to the revocation or termination of any of the Licenses or Permits. Seller has all material Licenses and Permits necessary to conduct its Business as now conducted.

Section 4.15. Insurance.

(a) Schedule 4.15 sets forth a list of all policies of title, liability, fire, casualty, business interruption, workers' compensation and all other forms of insurance (collectively, "Policies" and each individually, a "Policy") which have insured the Acquired Assets and Business in the twelve (12) month period prior to the Closing Date, specifying the carrier, policy number, expiration dates, premiums, description of type of coverage and coverage amounts for each Policy. Seller has made true and complete copies of all Policies available to Purchaser.

(b) Each of the Policies is in an amount usually and customarily carried, and insures against those risks usually and customarily covered, by a Person engaged in the type of business which constitutes the Business. The Policies currently in effect are in full force and effect and are valid, outstanding and enforceable, and all premiums due thereon have been paid. Seller is not in default under any provisions of any Policy. There is no claim by Seller pending under any Policy as to which coverage has been questioned, denied or disputed by the underwriters of any Policy, and Seller has no Knowledge of any basis for denial of any claim under any Policy. The Policies were sufficient in all respects for compliance by Seller with all requirements of Law and with the requirements of all Assigned Contracts and Permits and Licenses.

Section 4.16. Contracts and Commitments.

(a) Schedule 4.16(a) lists all material contracts to which Seller is a party, including but not limited to the following (collectively, the "Material Contracts"):

(i) employment, consulting, bonus, profit-sharing, percentage compensation, deferred compensation, pension, welfare, retirement, stock purchase or stock option plans and agreements and commitments with employees and Affiliates of Seller;

(ii) notes, mortgages, contracts, agreements, and commitments for the repayment or borrowing of money by Seller, or for a line of credit including borrowings by Seller in the form of guarantees of, indemnification for, or agreements to acquire any obligations of others, and all security or pledge agreements related thereto;

(iii) contracts, agreements and commitments, other than the Assigned Contracts, relating to the purchase or sale of any goods or services by Seller, unless all amounts that may become due and payable, and all performance obligations that may arise, under such contract were paid in full and fully performed, as the case may be, prior to the Closing Date;

(iv) all material IP Licenses;

(v) contracts, agreements, and commitments relating to any joint venture, partnership, strategic alliance, or sharing of profits or losses with any Person to which Seller is a party or by which it or any of the Acquired Assets is bound;

(vi) contracts, agreements, and commitments containing covenants purporting to limit the freedom of Seller to compete in any business or in any geographic area; and

(vii) contracts, agreements, and commitments requiring payments or distributions by Seller to any shareholder, director, or employee of Seller, or any relative or Affiliate of any such Person.

(b) All of the Assigned Contracts are in full force and effect. Except as set forth on Schedule 4.16(b), to the Knowledge of Seller, (i) each Assigned Contract is the legal, valid and binding obligation of each party thereto enforceable against such party thereto in accordance with its terms, except to the extent that unenforceability would not materially adversely affect Seller's rights thereunder or as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles and (ii) no other party thereto is in material default or has failed to perform any material obligation thereunder. Complete and correct copies of each Assigned Contract have been delivered or made available to Purchaser. There is no default of or failure to perform by Seller under any Contract that could reasonably be expected to have a Material Adverse Effect with respect to Seller, the Business or the Acquired Assets.

(c) Except as set forth in Schedule 4.16(c), all of the Consents to Assignment have been obtained by Seller and provided to Purchaser.

Section 4.17. Customers and Suppliers. Schedule 4.17 sets forth a list of (a) Seller's ten (10) largest customers by dollar volume (with specification of the dollar volume) for the period January 1, 2002 to December 31, 2002 and (b) Seller's ten (10) largest suppliers by dollar volume (with specification of the dollar volume) for the period January 1, 2002 to December 31, 2002.

Section 4.18. Compliance with Law. Except as set forth on Schedule 4.18, Seller is in compliance in all material respects with all Laws applicable to Seller, the Acquired Assets and the Business, including those applicable to discrimination in employment, occupational safety and health, trade practices, competition and pricing, product warranties, zoning, building, sanitation, employment, retirement, labor relations, product advertising and any applicable Environmental Requirements, except where noncompliance could not reasonably be expected to have a Material Adverse Effect with respect to Seller, the Business or the Acquired Assets. Seller is not in default or violation with respect to any order, writ, judgment, award, injunction or decree of any Governmental Entity or arbitrator applicable to Seller, the Acquired Assets or the Business. To the Knowledge of Seller, there are no existing orders, judgments or decrees of any Governmental Entity adversely affecting the Business or any Acquired Asset.

Section 4.19. Litigation. Except as set forth on Schedule 4.19, (a) there are no material claims, actions, suits, proceedings, arbitral actions, or investigations ("Actions") pending or, to the Knowledge of Seller, threatened against Seller or involving any of the Acquired Assets that seek (i) to obtain monetary damages, (ii) to restrain, enjoin or limit the use or exploitation of any Acquired Asset or otherwise limit the conduct of the Business or (iii) to enjoin or rescind the transactions contemplated by this Agreement or otherwise seek to prevent Seller from complying with the terms and provisions of this Agreement and (b) there are no unsatisfied judgments of any kind against Seller or any of the Acquired Assets.

Section 4.20. Title to the Acquired Assets and Related Matters. Except as set forth on Schedule 4.20, Seller has good and marketable title to all of the Acquired Assets, free and clear of all Encumbrances (other than the Permitted Encumbrances), and has the complete

and unrestricted power and the unqualified right to sell, convey, assign, transfer and deliver the Acquired Assets to Purchaser.

Section 4.21. Real Property. Seller does not own and has never owned any real property. Schedule 4.21 sets forth a complete list of all real property in which Seller has a leasehold interest which is held or used in connection with the Business (the "Leased Real Property"). Except as set forth on Schedule 4.21, none of the Leased Real Property is subject to any sublease or grant to any Person of any right to the use, occupancy, or enjoyment of the property or any portion thereof.

Section 4.22. No Other Agreements. Seller does not have any obligation, absolute or contingent, to any other Person to sell, assign or transfer any of the Acquired Assets, or to effect any merger, consolidation or other reorganization involving Seller, or to enter into any agreement with respect to any of the foregoing.

Section 4.23. Broker's and Finder's Fees. Except for those Persons set forth on Schedule 4.23 (the fees and commissions of which shall be paid in full by Seller), no broker, finder or other Person is entitled to any commission or finder's fee in connection with this Agreement or any of the Related Agreements or the transactions contemplated hereby or thereby as a result of any actions or commitments of Seller (or any of its Affiliates).

Section 4.24. Disclosure. This Agreement and the schedules delivered pursuant hereto do not as of the Closing Date contain any untrue statement of a material fact or omit any information or statement of a material fact necessary in order to make the information or statements herein or therein not misleading in light of the circumstances in which they were made by Seller.

Section 4.25. Capitalization. As of the Closing Date, the capitalization of Seller is as set forth on Schedule 4.25. All outstanding equity securities of Seller have been duly authorized and validly issued and are fully paid and nonassessable.

Section 4.26. Product Warranties. Schedule 4.26 includes copies of the standard terms and conditions of sale for each product manufactured or sold or service provided in the conduct or operation of the Business (containing applicable guaranty, warranty and indemnity provisions). The products sold in the conduct or operation of the Business have been sold in accordance with the standard terms and conditions of sale. All product warranty claims included in the Assumed Liabilities are governed exclusively by the terms of the warranty provisions in the standard terms and conditions of sale.

Section 4.27. General.

(a) Except as otherwise indicated therein, the representations and warranties contained in the foregoing Sections 4.01 through 4.26 of this Agreement, inclusive, are made as of the date of this Agreement.

(b) Notwithstanding any other provision of this Agreement or otherwise, Seller shall not be deemed to have made any representation or warranty other than those expressly made in Sections 4.01 through 4.26, inclusive. Without limiting the generality

of the foregoing, and notwithstanding any otherwise express representation or warranty made by Seller in Sections 4.01 through 4.26, inclusive, Seller makes no representation and warranty with respect to:

(i) any oral or written projections, estimates, budgets or statements heretofore delivered to or made available to Purchaser of future revenues, expenses or expenditures, results of operations, profitability, cash flows, budgets, prospects, financial condition, market conditions or new developments with respect to the Acquired Assets or the Business; or

(ii) any other oral or written information or documents of any kind made available to Purchaser or any of its representatives with respect to Seller, except as expressly covered by a representation or warranty contained in Sections 4.01 through 4.26, inclusive.

ARTICLE V. **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

As a material inducement to Seller to enter into this Agreement and the Related Agreements and to consummate the transactions contemplated hereby and thereby, Purchaser represents and warrants to Purchaser as follows:

Section 5.01. Organization; Power. Purchaser is a corporation duly incorporated, validly existing, and in good standing under the Laws of the State of Delaware and has all requisite corporate power and authority to own its properties and assets and to conduct its business as now conducted.

Section 5.02. Authorization; Validity. Purchaser has all requisite corporate power and authority to enter into this Agreement and the Related Agreements and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Related Agreements and the performance of the obligations of Purchaser hereunder and thereunder have been duly authorized by all necessary corporate action by Purchaser and no other corporate proceedings on the part of Purchaser are necessary to authorize the execution, delivery or performance of this Agreement and the Related Agreements. Purchaser has duly executed this Agreement and each of the Related Agreements to which it is a party and such agreements constitute, upon due execution thereof, the valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms and conditions, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles.

Section 5.03. No Conflict or Violation. Purchaser's execution, delivery and performance of this Agreement and the Related Agreements do not and shall not, in any material respect: (a) violate or conflict with any provision of the Certificate of Incorporation, Bylaws or other corporate governing documents of Purchaser; (b) violate any provision of Law applicable to Purchaser; or (c) violate or result in a breach of or constitute (with due notice or lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust,

indenture, license, consent order or other agreement or instrument to which Purchaser is a party, or by which Purchaser is bound or to which any of Purchaser's material properties or assets is subject.

Section 5.04. Consents and Approvals. Purchaser's execution, delivery and performance of this Agreement and the Related Agreements do not require Purchaser to obtain the consent or approval of, or to make any filing with, any Governmental Entity or other Person except such consents, approvals, and filings, the failure to obtain or make which would not, individually or in the aggregate, have a Material Adverse Effect with respect to Purchaser.

Section 5.05. Litigation. There are no actions, material claims, suits or proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser in connection with or relating to the transactions contemplated by this Agreement or any Related Agreement.

Section 5.06. Broker's and Finder's Fees. Other than USBX Advisory Services and Ripplewood Denon Acquisition, L.P. and their respective Affiliates (the fees and commissions of which shall be paid in full by Purchaser), no broker, finder or other Person is entitled to any commission or finder's fee in connection with this Agreement and the Related Agreements or the transactions contemplated by this Agreement and the Related Agreements as a result of any actions or commitments of Purchaser or any of its Affiliates.

ARTICLE VI. **OTHER AGREEMENTS**

Section 6.01. Files and Records. Purchaser shall retain possession of all Files and Records transferred to Purchaser hereunder and files and records coming into existence after the Closing Date which relate to the Business before the Closing Date (including, without limitation, personnel files and information related to any Former Seller Employees), for a period of seven (7) years following the Closing Date. In addition, from and after the Closing Date, upon reasonable notice and during normal business hours, Purchaser shall provide access to Seller and its attorneys, accountants and other representatives, at Seller's expense, to such files and records as Seller may reasonably deem necessary to properly prepare for, file, prove, answer, prosecute, and/or defend any Tax return, filing, audit, protest, claim, suit, inquiry or other proceeding.

Section 6.02. Employees. Effective immediately prior to the Closing, Seller has terminated the employment of all of its employees, a list of whom is set forth on Schedule 6.02(a) ("Former Seller Employees"). Purchaser shall offer to hire all Former Seller Employees, with the exception of the employees named on Schedule 6.02(b), immediately following the Closing on terms and conditions of employment not materially less favorable than those provided by Seller immediately prior to the Closing (other than with respect to any equity or equity-based compensation) and otherwise as determined by Purchaser in its sole discretion. All Former Seller Employees who accept Purchaser's offer of employment and commence working with Purchaser ("New Purchaser Employees") will be credited with his or her years of service with Seller solely for purposes of eligibility to participate in, and vesting under (but not for purposes of benefit accrual requirements under), any of the employee benefit programs maintained by Purchaser or any of its Affiliates for their employees. Purchaser shall be solely responsible for severance costs and expenses, if any, attributable to any Former Seller Employee

(i) who is not offered employment by Purchaser, (ii) who does not accept Purchaser's offer of employment or (iii) who leaves the employment of, or is terminated by, Purchaser after the Closing.

Section 6.03. COBRA Obligations. The parties hereto acknowledge and understand that Seller will cease to maintain a group health plan following the Closing and will cease providing, and will not provide, continuing health benefit coverage as described in Sections 601 through 608 of ERISA and Code Section 4980B (hereinafter referred to as "COBRA Coverage") to any of those persons who are "M&A qualified beneficiaries" (as described in Internal Revenue Service Regulation Section 54.4980B-9, Question and Answer 4) (hereinafter referred to as "COBRA Beneficiaries"), which COBRA Beneficiaries are listed on Schedule 6.03 hereto. The parties hereto agree that all obligations to provide COBRA Coverage to COBRA Beneficiaries are being allocated to Purchaser, consistent with the provisions of Internal Revenue Service Regulation Section 54.4980B-9, Question and Answer 7, and Purchaser shall be solely responsible for providing such coverage to such COBRA Beneficiaries. Notwithstanding any of the foregoing to the contrary, under no circumstances shall Purchaser assume any liability of Seller with respect to any failure of Seller to comply with COBRA prior to the Closing or any liability arising or existing under COBRA as it relates to present or former employees of Seller who do not meet the definition of COBRA Beneficiaries as set forth above.

Section 6.04. Employee Benefits.

(a) Effective as of the Closing Date, New Purchaser Employees who are participants in the Escient Profit-Sharing Plan ("Seller's 401(k) Plan") shall cease making contributions to Seller's 401(k) Plan and, to the extent permitted by Seller's 401(k) Plan, shall become vested in their account balances as of the Closing Date. To the extent permitted under the terms of Seller's 401(k) Plan and consistent with the provisions of Section 401(k)(2)(B)(i) of the Code, Seller shall cause the trustee of the trust under Seller's 401(k) Plan to permit eligible rollover distributions within the meaning of Section 402(c) of the Code from Seller's 401(k) Plan to New Purchaser Employees. Effective as of the Closing Date, Purchaser shall designate a 401(k) Plan of the Purchaser or an Affiliate thereof ("Purchaser's 401(k) Plan") in which New Purchaser Employees shall be eligible to participate in accordance with its terms and subject to the requirements of Section 6.02 hereof. Purchaser's 401(k) Plan will accept eligible rollover distributions within the meaning of Section 402(c) of the Code from Seller's 401(k) Plan.

(b) Subject to Section 6.03 of this Agreement (which sets forth the assumption of COBRA obligations by Purchaser) and this Section 6.04, Purchaser shall not assume any Benefit Plan of Seller. Effective as of the Closing Date, New Purchaser Employees shall be eligible to immediately participate in such employee benefit plans of the Purchaser or an Affiliate thereof as Purchaser shall designate in accordance with the requirements of Section 6.02 hereof and otherwise in accordance with the terms and conditions on which similarly situated employees of Purchaser (or an Affiliate thereof, as the case may be) participate therein as of the Closing Date. As of the Closing Date, Purchaser shall (i) cause any pre-existing conditions to be waived under any employee benefit plans offered by Purchaser for New Purchaser Employees currently participating in like plans of Seller, (ii) grant credit for year-to-date out of pocket costs (deductibles,

co-payments, etc.) incurred by such New Purchaser Employees under any Benefit Plan of Seller that is reasonably comparable to that maintained by Purchaser (or an Affiliate thereof, as the case may be), and (iii) to the extent permitted under applicable law, ensure that all participant contributions credited towards any flexible spending accounts of a New Purchaser Employee under Seller's Code Section 125 plan as of the Closing Date will be credited to each such New Purchaser Employee's account under Purchaser's Code Section 125 plan.

(c) Set forth on Schedule 6.04 hereof is the number of vacation days accrued, used, and not used under Seller's vacation policy as of the Closing Date. As of the Closing Date, Purchaser shall credit each New Purchaser Employee with his or her number of accrued but unused vacation days, but only to the maximum extent permitted by Purchaser's vacation policy currently in effect for similarly situated employees of Purchaser (a copy of which has previously been provided to Seller), giving recognition to such number of vacation days that each such New Purchaser Employee has already taken during 2003. Notwithstanding the foregoing, regardless of Purchaser's vacation policy, (i) Purchaser is assuming all of Seller's liabilities and obligations to Former Seller Employees and New Purchaser Employees for accrued vacation as set forth on Schedule 6.04 hereof and nothing in this Section 6.04 shall be construed otherwise and (ii) to the extent that any New Purchaser Employee has accrued but unused vacation days under Seller's vacation policy in excess of those vacation days permitted by Purchaser's vacation policy, Purchaser shall pay to such New Purchaser Employee the cash equivalent of any such excess number of vacation days after the Closing.

(d) To the extent permitted under applicable Law, Seller shall provide Purchaser with all records and information necessary or appropriate to carry out Purchaser's obligations under this Section 6.04.

Section 6.05. Use of Systems. The parties hereto acknowledge that certain of Seller's Affiliates are currently using email accounts through www.escient.com and agree that such Affiliates may continue their use of those accounts until they can be replaced with other accounts; provided that such use shall in no event continue for more than ninety (90) days following the Closing.

Section 6.06. Obtaining of Consents. Seller shall use its commercially reasonable best efforts to obtain all of the Consents to Assignment with respect to those Assigned Contracts set forth on Schedule 4.16(c) as soon as practicable after the Closing Date.

ARTICLE VII. **INDEMNIFICATION**

Section 7.01. Indemnification by Seller. From and after the Closing Date and subject to the provisions of Section 7.04, Seller shall indemnify, defend and hold harmless Purchaser and its successors and permitted assigns (and each of their respective shareholders, employees, officers, directors, representatives, Affiliates and agents), without duplication, from and against any and all damages, losses, obligations, liabilities, claims, penalties, costs and

expenses, including reasonable attorneys' fees (and costs and reasonable attorneys' fees in respect of any suit to enforce this provision) (each a "Claim"), arising from or relating to:

(a) any material misrepresentation in or material breach of or material failure to perform any representation or warranty of Seller contained in this Agreement or any Related Agreement to which Seller is a party;

(b) any material misrepresentation in or material breach of or material failure to perform any covenant, agreement or other obligation of Seller contained in this Agreement or any Related Agreement to which Seller is a party;

(c) any Liability of Seller relating to the Acquired Assets or the Business to the extent arising out of transactions entered into or events occurring prior to the Closing Date (other than any Assumed Liabilities);

(d) any Liability whether presently in existence or arising hereafter that is attributable to an Excluded Asset;

(e) any accounts payable or accrued and unpaid expenses, including but not limited to direct out-of-pocket third party commissions, duplication costs and other distribution expenses that are due and payable by their own terms on or before the Closing Date (other than any Assumed Liabilities);

(f) any loss, claim, expense, damage or liability (including reasonable attorneys' fees and expenses) to which Purchaser and/or the Acquired Assets may become subject insofar as such loss, claim, damage or liability (or actions in respect thereof) arises out of or is based upon a breach or alleged breach of, or failure to comply with any provision of, or failure to give any notice or make any filing pursuant to, any bulk sales Law or similar Law of any state or other jurisdiction, whether or not Seller or Purchaser attempt to comply with such bulk sales Law (provided, that nothing in this Section 7.01(f) shall estop or prevent Seller or Purchaser from asserting as a bar or defense to any action or proceeding brought under any state bulk sales Law that such Law is not applicable to the transactions contemplated by this Agreement);

(g) any repayment to Thomson Multimedia, Inc. ("Thomson") of prepaid royalties (the "Thomson Prepaid Royalties") made by Thomson to Seller under that certain Memorandum of Understanding, dated as of March 28, 2002 (the "Thomson MOU"), or that certain Development and License Letter of Intent, dated as of September 20, 2000 (the "Thomson LOI"), to the extent that Thomson (i) terminates any of the Thomson MOU, the Thomson LOI or that certain Product Development and License Agreement, dated March 18, 2002 (together, the "Thomson Agreements") within sixty (60) days of the Closing and (ii) demands repayment of any of the Thomson Prepaid Royalties in connection therewith; provided that any such termination and demand for repayment is not due to Purchaser's breach of or failure to perform in good faith any of its assumed obligations under the Thomson Agreements following the Closing or Purchaser's breach of its obligations under Section 7.03(b)(iv) of this Agreement;

(h) the failure of Seller to obtain Consents to Assignment after the Closing Date with respect to any of the Assigned Contracts set forth on Schedule 4.16(c)(B); and

(i) any and all actions, suits, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing.

Section 7.02. Indemnification by Purchaser. From and after the Closing Date and subject to the provisions of Section 7.04, Purchaser shall indemnify, defend and hold harmless Seller and its successors and permitted assigns (and each of their respective shareholders, officers, directors, representatives, Affiliates and agents), without duplication, from and against any and all Claims resulting from or relating to:

(a) any material misrepresentation in or material breach of or material failure to perform any representation or warranty of Purchaser contained in this Agreement or any Related Agreement to which Purchaser is a party;

(b) any material misrepresentation in or material breach of or material failure to perform any covenant, agreement or other obligation of Purchaser contained in this Agreement or any Related Agreement to which Purchaser is a party;

(c) any Liability of Purchaser relating to the Acquired Assets or Business to the extent arising out of transactions entered into or events occurring on or after the Closing Date;

(d) the Assumed Liabilities (or any one of them); and

(e) any and all suits, actions, investigations, proceedings, demands, assessments, audits and judgments arising out of any of the foregoing.

Section 7.03. Procedure for Making Indemnification Claims.

(a) General. Promptly after acquiring knowledge of any Claim for which one of the parties hereto (the "Indemnified Party") may seek indemnification against another party (the "Indemnifying Party") pursuant to this Article VII, the Indemnified Party shall give written notice thereof to the Indemnifying Party. Failure to provide prompt written notice shall not relieve the Indemnifying Party of its obligations under this Article VII except to the extent that the Indemnifying Party is materially damaged by such failure.

(b) Third Party Claims.

(i) Any Indemnified Party seeking indemnification pursuant to this Article VII in respect of any Claim instituted by any third Person shall give the Indemnifying Party (A) prompt written notice (but in no event more than twenty (20) days after the Indemnified Party acquires knowledge thereof) of such Claim and (B) copies of all documents and information relating to any such Claim within twenty (20) days of their being obtained by the Indemnified Party; provided, that the failure by the Indemnified Party to so notify or provide copies to the Indemnifying Party shall not relieve the Indemnifying Party from any

liability to the Indemnified Party for any liability hereunder except to the extent that such failure shall have actually prejudiced the defense of the Claim.

(ii) Subject to Section 7.03(b)(iii) below, the Indemnifying Party shall have the right, at its option and expense, to defend against, negotiate, settle or otherwise deal with any Claim with respect to which it is the Indemnifying Party and to be represented by counsel of its own choice, and the Indemnified Party will not admit any liability with respect thereto or settle, compromise, pay or discharge the same without the consent of the Indemnifying Party, so long as the Indemnifying Party is contesting or defending the same with reasonable diligence and in good faith. The Indemnified Party may participate in any proceeding with counsel of its choice and at its expense. The Indemnifying Party may not enter into a settlement of any such Claim without the consent of the Indemnified Party, which consent shall be not unreasonably withheld, unless such settlement requires no more than a monetary payment for which the Indemnified Party is fully indemnified by the Indemnifying Party or involves other matters not binding upon the Indemnified Party.

(iii) In the event the Indemnifying Party does not, within twenty (20) days after it receives written notice of the Claim from the Indemnified Party, agree in writing to accept the defense of, and assume all responsibility for (subject to the terms of this Article VII), such Claim as provided in this Article VII, then the Indemnified Party shall have the right to defend against, negotiate, settle or otherwise deal with the Claim in such manner as the Indemnified Party deems appropriate, in its sole discretion, and the Indemnified Party shall be entitled to indemnification therefor from the Indemnifying Party in accordance with the terms and conditions of this Article VII.

(iv) In addition to the foregoing, with respect to any Claim described in Section 7.01(g), Purchaser acknowledges that Seller intends to dispute any such Claim and agrees to (1) use its commercially reasonable best efforts to cooperate with Seller to vigorously defend any such Claim, (2) assert that the Thomson Agreements are in full force and effect after the Closing Date, that the Thomson Agreements were assignable to Purchaser without Thomson's consent, and that Thomson has no right of cancellation or termination and no entitlement to any refund of Prepaid Royalties in connection with any such cancellation or termination, and (3) take no actions, directly or indirectly, designed to result in the termination or cancellation of the Thomson Agreements.

Section 7.04. Survival; Escrow; Payment of Claims; Deductibles; Exclusive Remedy.

(a) Survival. Notwithstanding any term or provision of this Agreement to the contrary, each of the parties' representations and warranties contained in this Agreement and the Related Agreements shall survive the execution, delivery and performance hereof and thereof, notwithstanding any investigation conducted by any other party hereto at any time with respect thereto, for a period of eighteen (18) months following the Closing Date (the "Survival Period"); provided, however, that all representations and warranties of Seller relating to fraud or title or ownership of the Acquired Assets contained herein shall indefinitely survive the execution, delivery and performance hereof and thereof.

(b) Escrow. The obligation of Seller to pay any Liability which may arise under Section 2.06(b) or this Article VII shall be secured solely by the Escrow Deposit in accordance with that certain escrow agreement entered into on the date hereof by Purchaser and Seller, the form of which is attached hereto as Exhibit 7.04(b) (the "Escrow Agreement"). The term of the Escrow Agreement shall commence on the Closing Date and shall continue until the later of the expiration of the Survival Period or resolution of any and all indemnification Claims received by Seller prior to the expiration of such Survival Period. As soon as practicable following the termination of such Escrow Agreement in accordance with the provisions of this Section 7.04(b) and the Escrow Agreement, Seller shall receive (or a liquidating trust on behalf of Seller, if applicable, shall receive) the remaining balance of the Escrow Deposit in accordance with the terms of the Escrow Agreement.

(c) Payment of Claims. All Claims for indemnification asserted under this Agreement against Purchaser by Seller shall be paid by Purchaser in cash within ten (10) Business Days after such amount is finally determined either by mutual agreement of the parties or pursuant to the final determination thereof by a court of competent jurisdiction. All Claims for indemnification asserted under this Agreement against Seller by Purchaser (other than those relating to fraud or title or ownership of the Acquired Assets) shall be made solely against, and shall be satisfied solely by a return to Purchaser of all or a portion of the Escrow Deposit in accordance with the terms of the Escrow Agreement.

(d) Deductibles. Notwithstanding anything to the contrary contained in this Agreement or the Escrow Agreement, neither Purchaser (nor any other Person entitled to indemnification from Seller) shall be entitled to indemnification from Seller under this Agreement with respect to any Claim unless and until the aggregate amount of all such Claims, plus the aggregate amount of all indemnity claims against ECC under the ECC Purchase Agreement, combined, exceeds \$100,000 (and then only for amounts in excess of \$100,000).

(e) Exclusive Remedy. The indemnification rights of Purchaser (and any other Person entitled to indemnification from Seller) shall constitute the sole and exclusive remedy of Purchaser and such other Persons with respect to any breach by Seller of this Agreement or any Related Agreement or any cause of action against Seller arising out of the transactions provided for in this Agreement or any Related Agreement; provided,

however, that this Section 7.04(e) shall not limit or otherwise restrict (i) any remedies of Purchaser with respect to any actual fraud of Seller or (ii) any right to injunctive or equitable relief with respect to a breach of the Covenant Not to Compete.

ARTICLE VIII. **MISCELLANEOUS**

Section 8.01. Confidential Information. The parties hereto agree that they will treat in confidence all documents, materials and other information regarding any other party hereto which it shall have obtained during the course of the negotiations leading to the consummation of the transactions contemplated by this Agreement and the Related Agreements (whether obtained before or after the Closing Date) or the preparation of this Agreement or the Related Agreements. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which: (a) such party can demonstrate was already lawfully in its possession prior to the disclosure thereof by the other party; (b) is known to the public and did not become so known through any violation of a legal obligation; (c) became known to the public through no fault of such party; (d) is later lawfully acquired by such party from other sources; (e) is required to be disclosed under the provisions of any Law or by any stock exchange or similar body; or (f) is required to be disclosed by a rule or order of any court of competent jurisdiction.

Section 8.02. Public Announcements. No party shall make any press release, public announcement or other public disclosure concerning the transactions provided for in this Agreement and the Related Agreements, except as expressly agreed upon by all of the parties, unless required by Law or by any stock exchange or similar body, subject to the prior approval of all other parties of the content thereof, which approval shall not be unreasonably withheld or delayed.

Section 8.03. Expenses. Except as otherwise specifically provided herein, each of the parties hereto shall pay its own expenses in connection with the negotiation, execution and delivery of this Agreement and the Related Agreements and the transactions contemplated hereby and thereby, including any legal, accounting or other representative or advisor costs and expenses.

Section 8.04. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be delivered to the address set forth below (a) if within the domestic United States by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (b) if delivered from outside the United States, by International Federal Express or facsimile, and shall be deemed to have been duly given (i) if served personally on the party to whom notice is to be given, on the date of service, (ii) if delivered via facsimile, on the date of transmission to the facsimile number given below, provided that telephonic confirmation of receipt is obtained promptly after completion of transmission; (iii) if delivered by domestic first-class registered or certified mail, three Business Days after so mailed, (iv) if delivered by nationally recognized overnight carrier, one Business Day after so mailed, and (v) if delivered by International Federal Express, two Business Days after so mailed:

If to Seller, to:

OpenGlobe, Inc.
c/o Escient Technologies, LLC
6325 Digital Way
Suite 200
Indianapolis, IN 46278
Attention: President
Tel. No. (317) 814-3030
Fax No. (317) 846-5848

with a copy to (which copy alone shall not constitute notice for the purposes of this Agreement):

Ice Miller
One American Square
Box 82001
Indianapolis, IN 46282
Attention: John R. Thornburgh
Tel. No. (317) 236-2405
Fax No. (317) 592-4783

If to Purchaser, to:

Digital Networks North America, Inc.
19 Chapin Road
P.O. Box 876
Pine Brook, NJ 07508
Attention: Dom Golio
Tel. No. (973) 396-7475
Fax No. (973) 396-7516

with a copy to (which copy alone shall not constitute notice for the purposes of this Agreement):

Simpson Thacher & Bartlett
Suite 1850
10 Universal City Plaza
Los Angeles, California 91608
Attention: Daniel Clivner
Tel. No. (818) 755-9613
Fax No. (818) 755-7009

Any party may change its address or facsimile number for the purpose of this Section 8.04 by giving the other parties written notice of its new address or facsimile number in the manner set forth above.

Section 8.05. Headings. The article, section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of any term or provision of this Agreement.

Section 8.06. Severability. If any provision of this Agreement is declared by any court of competent jurisdiction to be null, void or unenforceable, this Agreement shall be construed so that the provision at issue shall survive to the extent it is not so declared and that all of the other provisions of this Agreement shall remain in full force and effect.

Section 8.07. Entire Agreement. This Agreement and the Related Agreements contain the entire understanding among the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior agreements and understandings, oral or written, with regard to those transactions. All exhibits and schedules attached hereto are expressly made a part of this Agreement as though completely set forth herein.

Section 8.08. Amendments; Waivers. This Agreement may be amended, modified or supplemented, and any of the terms, covenants, representations, warranties or conditions herein may be waived, only by a written instrument executed by each of the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 8.09. Parties in Interest; Third Party Beneficiary. Nothing in this Agreement, expressed or implied, is intended to or shall (a) confer on any Person other than the parties hereto and their respective successors, assigns and Affiliates any rights (including any Third Party beneficiary rights), remedies, obligations or liabilities under or by reason of this Agreement or (b) constitute the parties hereto as partners or as participants in a joint venture. No Third Party shall have any right (independent of any right that exists irrespective of this Agreement) under this Agreement to bring any suit at law or equity for any matter governed by or subject to the provisions of this Agreement. Nothing in this Agreement shall be construed as giving to any New Purchaser Employee, or any other individual, any right or entitlement under any Benefit Plan, policy or procedure maintained by Seller, except as expressly provided in such Benefit Plan, policy or procedure. No Third Party shall have any rights under Section 402, 503 or 504 of ERISA or any regulations thereunder because of this Agreement that would not otherwise exist without reference to this Agreement. For the avoidance of any doubt, notwithstanding any of the foregoing provisions of this Section 8.09 to the contrary, Scott A. Jones (i) shall be deemed a Third Party beneficiary with respect to those indemnification obligations of Purchaser specified in Section 7.02(d) of this Agreement relating to personal guarantees of Scott A. Jones that are included in the Assumed Liabilities and (ii) shall be entitled to bring any suit at law or equity for indemnification of such matters or exercise any other remedy available to Seller with respect to such matters in accordance with the terms of this Agreement.

Section 8.10. Successors and Assigns. No party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other parties hereto, and any attempted assignment or delegation without the necessary prior written

consent shall be void and of no force or effect; provided, that such consent shall not be required in the case of a proposed assignment or transfer to an Affiliate of Purchaser; and provided, further, that Seller may assign its rights and interests hereunder to one or more creditors of Seller after the Closing Date or pursuant to the terms and conditions of a liquidating trust agreement in connection with the termination of its operations after the Closing Date. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto.

Section 8.11. Governing Law; Jurisdiction; Jury Trial Waiver. This Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York. Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York located in the borough of Manhattan in the City of New York, or, if such court does not have jurisdiction, the Supreme Court of the State of New York, New York County, for the purposes of any suit, action or other proceeding arising out of this Agreement. Each of the Parties hereby further agrees that service of any process, summons, notice or document by U.S. registered mail to its address set forth in Section 8.04 shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of the Parties hereto irrevocably and unconditionally waives, to the extent permitted by applicable law, any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in (a) the United States District Court for the Southern District of New York or (b) the Supreme Court of the State of New York, New York County, and hereby further irrevocably and unconditionally waives, to the extent permitted by applicable Law, and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. To the extent permitted by applicable Law, each of the parties waives the right to trial by jury in any such action or proceeding.

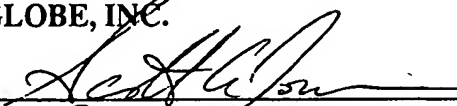
Section 8.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the date set forth in the first paragraph of this Agreement.

"SELLER"

OPENGLOBE, INC.

By: 

Printed: Scott A. Jones

Title: Chairman

"PURCHASER"

DIGITAL NETWORKS NORTH AMERICA, INC.

By: _____

Printed: _____

Title: _____

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the date set forth in the first paragraph of this Agreement.

"SELLER"

OPENGLOBE, INC.

By: _____

Printed: _____

Title: _____

"PURCHASER"

DIGITAL NETWORKS NORTH AMERICA, INC.

By: _____

Printed: _____

Title: _____

LIST OF EXHIBITS

2.06	February Statement of Net Assets
3.02(d)	Bill of Sale
3.02(e)	Assignment and Assumption Agreement
3.02(f)	Intech Letter Agreement
3.02(h)	Covenant Not to Compete
3.02(k)	Consulting Agreement
3.02(n)	Furniture, Equipment and Systems Letter Agreement
3.03(m)	Guaranty
7.04(b)	Escrow Agreement

LIST OF SCHEDULES

1.01	Assigned Contracts
1.03	Permitted Encumbrances
2.01	Certain Tangible Acquired Assets
2.03(k)	Miscellaneous Excluded Assets
2.04(i)	Scott A. Jones Guarantees
2.04(iii)	Accounts Payable
2.04(v)	Accrued Expenses
2.08	Allocation of Purchase Price
3.02(g)	Key Employees
3.02(i)	Non-Competition and Option Employees
3.02(k)	Certain Consents to Assignment
3.02(l)	Option Employees
3.02(m)	Consents to Assignment
4.04	Required Consents and Approvals
4.05	Financial Statements
4.06	Absence of Certain Changes or Events
4.07	Tax Matters
4.08	Other Undisclosed Liabilities
4.11(a)	Registered IP
4.11(b)	Actions; Restrictions on Transfers; Encumbrances
4.11(c)	Required Actions
4.11(d)	Title/License to Use Intellectual Property
4.11(e)	IP Licenses/Agreements
4.11(f)	Infringements
4.11(g)	Security/Integrity of Systems
4.12	Labor Relations
4.13	Benefit Plans
4.14	Licenses and Permits
4.15	Business Insurance
4.16(a)	Material Contracts
4.16(b)	Assigned Contracts in Default
4.16(c)	Consents Not Obtained

4.17	Largest Customers/Suppliers
4.18	Compliance with Laws
4.19	Litigation
4.20	Title to Acquired Assets
4.21	Real Property
4.23	Broker's and Finder's Fees
4.25	Capitalization
4.26	Product Warranties
6.02(a)	Former Seller Employees
6.02(b)	Former Seller Employees Not Offered Employment
6.03	COBRA Beneficiaries
6.04	Accrued Vacation

OPENGLOBE ASSET PURCHASE AGREEMENT
SCHEDULE OF EXCEPTIONS

THE SCHEDULE OF EXCEPTIONS ATTACHED HERETO IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. THE INTRODUCTORY LANGUAGE AND HEADINGS TO EACH SECTION OF THIS SCHEDULE OF EXCEPTIONS ARE INSERTED FOR CONVENIENCE ONLY AND SHALL NOT CREATE A DIFFERENT STANDARD FOR DISCLOSURE THAN THE LANGUAGE SET FORTH IN THE AGREEMENT.
2. THE INCLUSION OF ANY ITEM IN ANY SECTION OF THIS SCHEDULE OF EXCEPTIONS REQUIRING A LISTING OF "MATERIAL" ITEMS OR ACTIONS WHICH ARE "NOT IN THE ORDINARY COURSE OF BUSINESS" SHALL NOT BE DEEMED TO BE AN ADMISSION OR REPRESENTATION OF SELLER THAT THE INCLUDED ITEM IS IN FACT "MATERIAL" OR IS IN FACT "NOT IN THE ORDINARY COURSE OF BUSINESS".
3. ALL CAPITALIZED TERMS USED IN THIS SCHEDULE OF EXCEPTIONS AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANING GIVEN TO SUCH TERMS IN THE AGREEMENT.
4. ANY MATTER DISCLOSED IN ANY SECTION OF THIS SCHEDULE OF EXCEPTIONS SHALL BE DEEMED TO BE DISCLOSED FOR PURPOSES OF ANY OTHER SECTION OF THIS SCHEDULE OF EXCEPTIONS IN WHICH SUCH MATTER MAY REASONABLY BE EXPECTED TO BE RELEVANT.

Schedule 1.01
Assigned Contracts

1. Product Development and License Agreement, including Addendum as of December 17, 2002 by and between Seller and Kenwood dated March 27, 2001.
2. Music Tuning Service License Agreement by and between Seller and Sirius Radio Inc. dated January 4, 2002.
3. Memorandum of Understanding by and among Seller, TTC, Inc. and Thomson Multimedia, Inc. effective March 26, 2002.
4. Development and License Letter of Intent by and between Seller and Thomson Multimedia, Inc. dated September 20, 2002.
5. Product Development and License Agreement by and between Seller and Thomson Multimedia, Inc. dated March 18, 2002.
6. Exclusive Marketing Representation Agreement by and between Seller and Rainbow Partners dated November 15, 2002.
7. Development and License Agreement by and between Seller and Escient Convergence Corp. effective January 3, 2002.
8. Maintenance Agreement by and between Seller and Escient Convergence Corp. effective February 1, 2001.
9. Database License and Consumer Direct Fulfillment Services Agreement by and between Seller and AEC One Stop Group, Inc. dated October 16, 2000.
10. Supplemental Agreement by and between Seller and AEC One Stop Group, Inc. dated October 16, 2000.
11. Development and License Agreement by and between Seller and ANT Limited dated April 10, 2001.
12. Patent Cross-License Agreement by and between Seller and CDDDB, Inc. d/b/a Gracenote effective as of July 23, 2001.
13. Gracenote License and Preferred Integrator Agreement, dated April 21, 2003, by and between Seller and Gracenote, Inc.
14. Development Agreement by and between Seller and Compaq Computer Corporation effective as of June 2, 2000.

15. Digital Out Trademark License Agreement by and between Seller and Digital Theater Systems, Inc. effective February 3, 2000.
16. Client Agreement by and between Seller and Enso Audio Imaging Corporation made as of June 14, 1999.
17. Digital Audio System License Agreement by and among Seller, Dolby Laboratories Licensing Corporation and K-Byte Manufacturing effective May 4, 2000.
18. Dolby Consumer Surround Decoder by and between Seller, Dolby Laboratories Licensing Corporation and K-Byte Manufacturing effective May 4, 2000.
19. Development and License Agreement by and between Seller and International Business Machines Corporation effective September 13, 2000.
20. License Agreement by and between Seller and International Business Machines Corporation effective as of October 16, 2001.
21. Development Kit Agreement by and between Seller and Teralogic, Inc. dated August 21, 2001.
22. Audio Development and License Agreement by and between Seller and Texas Instruments Incorporated effective July 31, 2001.
23. Internet Audio Products Agreement by and between Seller and Texas Instruments Incorporated effective January 1, 2001.
24. Internet Audio Products Software License Agreement by and between Seller and Texas Instruments Incorporated dated October 23, 2000.
25. Music Tuning Service License Agreement by and between Seller and Radio Free Virgin, Inc. dated May 29, 2001.
26. License for Window Media Network Protocols by and between Seller and Microsoft Corporation dated April 19, 2001.
27. License Agreement by and between Escient Technologies, LLC and Matsushita Electric Industrial Co., LTD., dated September 9, 1999 (Assigned by Escient Technologies, LLC to Seller).
28. DVD Manufacturing License Agreement by and between Escient Technologies, LLC and Macrovision Corporation dated August 20, 1999 (Assigned by Escient Technologies, LLC to Seller).

29. Telecom Services Agreement for Local Exchange by and between Escient Technologies, LLC and Time Warner Telecom of Indiana LP dated October 2, 2002 (Assigned by Escient Technologies, LLC to Seller).
30. Lease Agreement for Office Furniture by and between Escient Technologies, LLC and Nichols Financial Services dated October 19, 2000 (Assigned by Escient Technologies, LLC to Seller).
31. Telecom Services Agreement for Internet Access by and between Escient Technologies, LLC and Time Warner Telecom of Indiana LP dated October 2, 2002 (Assigned by Escient Technologies, LLC to Seller).
32. Development Agreement by and between Seller and RioPort dated August 15, 2000.
33. Membership Agreement by and between Seller and Universal Plug and Play dated March 30, 2001.
34. Development Agreement by and between Seller and Sony Corporation dated December 28, 2001.
35. Referral Agreement by and between Seller and Earthlink, dated October 3, 2001.
36. Independent Contractor Agreement by and between Seller and Lonergan Associates dated January 23, 2003.
37. Source Code License Agreement by and between Seller and Broadcom HomeNetworking, Inc, dated August 15, 2000.
38. Separation and General Release Agreements, dated as of the dates indicated below, by and between Seller and each of the following:

Tracking	Date	Party
64-2001-1005	6/5/2001	Ha-Trang Parks
64-2001-1006	12/3/2001	Khanh Nguyen
64-2001-1007	12/3/2001	Michael Dawson
64-2001-1008	12/3/2001	Larry Roberts
64-2001-1009	12/2/2001	Irina Kovlerova
64-2001-1010	12/2/2001	Rekha Menon
64-2001-1011	12/3/2001	Maya Aprelenka
64-2001-1012	12/3/2001	Sean Priddy
64-2001-1013	12/3/2001	Randy Roberts
64-2001-1014	12/3/2001	Russ Bryan
64-2001-1015	12/10/2001	Max Cohen
64-2001-1016	4/8/2002	Bob Ballard
64-2001-1017	4/8/2002	Mike E. Dawson
64-2001-1018	4/8/2002	Frank Greer

64-2001-1019	4/8/2002	Nancy Heilemann
64-2001-1020	4/8/2002	Ralph Heredia
64-2001-1021	4/8/2002	Mike Hilley
64-2001-1022	4/4/2002	Bill Jarboe
64-2001-1023	4/5/2002	Lee Quist
64-2001-1024	4/8/2002	Benjamin Recio
64-2001-1025	4/5/2002	Eric Tabor
64-2001-1026	4/8/2002	Steven tenPas
64-2001-1027	4/7/2002	Wayne Tinklepaugh
64-2001-1028	4/8/2002	Ken Wheeler
64-2001-1029	4/8/2002	Randy Young
64-2001-1030	6/27/2002	Jeffery Kaisner
64-2001-1031	6/27/2002	Terry Strickland
64-2001-1032	6/27/2002	Michael Dean
64-2001-1033	6/27/2002	Philip Baron
64-2001-1034	7/18/2002	Joseph Fenimore
64-2001-1035	7/18/2002	Perry Manole
64-2001-1036	7/18/2002	Mohammad Zaher
64-2001-1037	7/18/2002	Pavani Chebolu
64-2001-1038	7/18/2002	John Kassebaum
64-2001-1039	7/18/2002	Mark Siminski
64-2001-1040	7/18/2002	Rebecca Meyer
64-2001-1041	7/18/2002	Chong Yea (Kim) Shaw
64-2001-1042	7/18/2002	Meg Aronson
64-2001-1043	7/18/2002	Abbie Ansborg
64-2001-1044	7/18/2002	Sue Russell
64-2001-1045	7/18/2002	Sean McLean
64-2001-1046	7/18/2002	Craig Miller
64-2001-1047	7/18/2002	Steve Kukla
64-2001-1048	7/18/2002	James May
64-2001-1049	7/18/2002	Brian Timmons

39. Non-Disclosure Agreements, dated as of the dates set forth below, executed by and between Seller and each of the following:

Tracking	Date Signed	Seller	Term	NDA Form
324-2003-1001	1/20/2000	Touchbridge Systems	20 years	Escient
324-2003-1010	5/19/1999	Sanmina Corp	20 years	Escient
324-2003-1011	5/24/1999	Manuel Castro	20 years	Escient
324-2003-1013	5/19/1999	Rebel.com	20 years	Escient
324-2003-1014	5/14/1999	SCI Systems	20 years	Escient
324-2003-1015	4/28/1999	M.A.C.-UK	20 years	Escient
324-2003-1017	3/26/1999	Minerva Systems	20 years	Escient
324-2003-1019	3/10/1999	Stellar One	5 years	Non-Escient
324-2003-1021	11/12/1998	Applied Microsystems	Perpetual	Non-Escient
324-2003-1023	8/27/1998	Pragmatic	6 years	Escient
324-2003-1025	3/18/1998	StarMatrix	Perpetual	Non-Escient
324-2003-1026	11/18/1997	Thomas Jacoby	Perpetual	Escient
324-2003-1027	10/15/1997	Ken Ingram	Perpetual	Escient

324-2003-1028	2/1/2000	Conexant	5 years	Non-Escient
324-2003-1029	1/10/2000	Scanlogic	5 years	Non-Escient
324-2003-1031	3/16/2000	Wind River Systems	Perpetual	Non-Escient
324-2003-1032	8/12/1999	Polk Audio	20 years	Escient
324-2003-1033	10/14/1997	Marty Wachter	Perpetual	Escient
324-2003-1035	6/3/1999	Jonathan Cohen	20 years	Escient
324-2003-1037	9/20/1999	Julie Holabird	20 years	Escient
324-2003-1038	5/13/1999	Channelseek	20 years	Escient
324-2003-1040	7/19/1999	Spyglass, Inc	20 years	Escient
324-2003-1041	9/25/1999	Vern's Electronics	20 years	Escient
324-2003-1042	9/24/1999	Myer-Emco	20 years	Escient
324-2003-1043	4/15/2000	NetFlix	3 years	Escient
324-2003-1044	5/5/2000	Vela	3 years	Escient
324-2003-1045	3/7/2000	THX	5 years	Non-Escient
324-2003-1047	2/10/2000	Texas Instruments	3 years	Non-Escient
324-2003-1048	2/20/2000	Rick Blair	3 years	Escient
324-2003-1049	1/18/1999	Keith Masavage	Perpetual	Escient
324-2003-1050	9/25/1999	Magnolia's	20 years	Escient
324-2003-1051	11/29/1999	Lydstrom	20 years	Escient
324-2003-1052	7/28/1999	Klipsch, LLC	Perpetual	Escient
324-2003-1053	6/1/1999	K-Byte Manufacturing	20 years	Escient
324-2003-1054	8/8/1999	Intel	5 years	Non-Escient
324-2003-1057	1/13/2000	N.V. Phillips Industrial Activities	5 years	Non-Escient
324-2003-1058	8/17/1999	Microsoft	5 years	Non-Escient
324-2003-1061.4	3/21/2001	Thomson	3 years	Non-Escient
324-2003-1062	7/19/1999	Toshiba & avActive, LLC	Perpetual	Non-Escient
324-2003-1062.A	11/10/2000	DVD Format/Logo Licensing	Perpetual	Non-Escient
324-2003-1065	9/22/1999	Novidor & Firestone	20 years	Escient
324-2003-1066	1/14/1999	19 th Star, LLC	Perpetual	Non-Escient
324-2003-1067	2/27/1999	Askey Computer	20 years	Escient
324-2003-1068	10/27/1999	Aeronix, Inc	Perpetual	Escient
324-2003-1069	2/22/1999	Aureate Media	Perpetual	Escient
324-2003-1070	2/15/1999	Avio Digital	20 years	Escient
324-2003-1071		iCompression	Perpetual	Non-Escient
324-2003-1072	9/25/1999	Contemporary Audio	20 years	Escient
324-2003-1073	1/1/1999	ESP	Perpetual	Escient
324-2003-1074	12/22/1998	Scott Fierstein	Perpetual	Escient
324-2003-1075	9/21/1999	Geartrn Associates	Perpetual	Escient
324-2003-1076	9/25/1999	Genesis Audio	20 years	Escient
324-2003-1077	9/23/1999	The Good Guys	Perpetual	Escient
324-2003-1078	12/22/1998	Tekton-Software Eng	Perpetual	Escient
324-2003-1079	11/17/1999	Lynx-Real Time Systems	5 years	Non-Escient
324-2003-1080	1/17/2000	Listen.com	At will	Non-Escient
324-2003-1081	3/11/1999	VM Labs	Perpetual	Non-Escient
324-2003-1082	2/16/1999	Vision Tech Ltd	5 years	Non-Escient
324-2003-1083	11/28/1998	Stimulus-Net, Inc	Perpetual	Non-Escient
324-2003-1084	9/25/1999	Harvey's	20 years	Escient
324-2003-1086	10/25/1999	Gemstar	5 years	Non-Escient
324-2003-1087	10/20/1999	GAO Resarch and Consulting	Perpetual	Escient
324-2003-1089	6/7/1999	Design Consortium	20 years	Escient

324-2003-1090	10/12/1999	Western Digital	5 years	Escient
324-2003-1094	6/11/1999	OpenCable	Perpetual	Non-Escient
324-2003-1098	2/21/2000	Zayante, Inc	5 years	Non-Escient
324-2003-1099	4/5/2000	Kenwood	3 years	Non-Escient
324-2003-1100	4/4/2000	Kerbango	3 years	Escient
324-2003-1107	12/7/1999	Panja	20 years	Escient
324-2003-1108	7/28/1999	Pillowsoft	20 years	Escient
324-2003-1109	10/7/1998	Digital Harmony	Perpetual	Escient
324-2003-1110	5/10/2000	Toshiba	3 years	Escient
324-2003-1112	5/16/2000	Everypath	5 years	Escient
324-2003-1113	5/15/1998	Bob Bordeau	5 years	Escient
324-2003-1114	5/14/1998	ESC Corp	5 years	Escient
324-2003-1115	5/6/1998	Media Systems	5 years	Escient
324-2003-1116	4/30/1998	iQ Electronic Interiors	5 years	Escient
324-2003-1117	5/1/1998	Select Marketing	5 years	Escient
324-2003-1118	4/30/1998	TABCOM, Inc	5 years	Escient
324-2003-1119	4/4/1998	Audio Mktg Assoc	5 years	Escient
324-2003-1120	5/13/1998	John Gearhardt	5 years	Escient
324-2003-1121	5/13/1998	Classic Design Group	5 years	Escient
324-2003-1122	5/10/1998	Jim Swearingen	5 years	Escient
324-2003-1123	5/7/1998	Definitive Audio	5 years	Escient
324-2003-1124	8/11/1999	Macrovision	3 years	Escient
324-2003-1125	5/5/2000	TEAC Corp	3 years	Escient
324-2003-1126	5/19/2000	Yamaha	3 years	Escient
324-2003-1127	5/17/2000	Open Interface	3 years	Escient
324-2003-1128	5/25/2000	StarNet	3 years	Escient
324-2003-1129	9/3/1999	MEI	Perpetual	Non-Escient
324-2003-1130	3/6/1999	Aon	20 years	Escient
324-2003-1133	5/25/2000	Muze, Inc	3 years	Escient
324-2003-1134	5/30/2000	eLocal.com	3 years	Escient
324-2003-1135	5/4/2000	MSC L & C	3 years	Escient
324-2003-1136	5/16/2000	AMD	3 years	Non-Escient
324-2003-1137	5/1/2000	TIBCO	5 years	Non-Escient
324-2003-1138	4/24/2000	Broadcast America.com	3 years	Escient
324-2003-1139	5/9/2000	atHome	3 years	Non-Escient
324-2003-1140	7/7/1999	Bostech	20 years	Escient
324-2003-1141	11/20/1998	Nullsoft	Perpetual	Escient
324-2003-1142	11/9/1998	Integer Group	Perpetual	Escient
324-2003-1143	8/24/1999	The eMMs Group	20 years	Escient
324-2003-1144	2/19/1999	SonicNet	7 years	Non-Escient
324-2003-1145	7/8/1999	Upstream Group, Inc	20 years	Escient
324-2003-1146	7/23/1999	ZineZone/iCast	20 years	Escient
324-2003-1147	5/27/1999	Kevin Healy	20 years	Escient
324-2003-1149	5/25/1999	Nirvis Systems	20 years	Escient
324-2003-1150	6/19/2000	Pioneer	3 years	Escient
324-2003-1151	6/13/2000	NBM Technologies	3 years	Escient
324-2003-1152	7/6/2000	RealNetworks	Perpetual	Escient
324-2003-1153	7/11/2000	NuHorizons	3 years	Escient
324-2003-1154	7/11/2000	Antec Corp	3 years	Escient
324-2003-1155	6/22/2000	ImageWorks	3 years	Escient

324-2003-1156	8/8/2000	Zoran	5 years	Non-Escient
64-2003-1157	8/19/2000	Lyon Sound	3 years	Non-Escient
64-2003-1159	8/16/2000	Earthlink	3 years	Escient
64-2003-1160	8/25/2000	Philips Semiconductor	2 years	Non-Escient
64-2003-1161	8/22/2000	Camden Vale		Non-Escient
64-2003-1162	8/8/2000	Carl Calabria	3 years	Escient
64-2003-1163	10/6/2000	Kaita Technology, LTD	3 years	Escient
64-2003-1164	10/20/2000	DVD Verification Lab of Matsushita	3 years	Non-Escient
63-2003-1165	10/24/2000	David Hicks	3 years	Escient
63-2003-1166	10/30/2000	iSyndicate	3 years	Escient
63-2003-1169	11/16/2000	3Com	3 years	Non-Escient
63-2003-1170	11/15/2000	Portal Player	3 years	Escient
63-2003-1171	11/17/2000	Ravisent Technologies	3 years	Escient
63-2003-1172	10/23/2000	Mikhail G.	3 years	Escient
63-2003-1173	10/23/2000	Scott Wilson	3 years	Escient
63-2003-1174	11/28/2000	Genuity	3 years	Non-Escient
63-2003-1174	12/21/2000	Weave Innovations, Inc.	3 years	Escient
63-2003-1175	12/1/2000	Texas Instruments	3 years	Non-Escient
63-2003-1176	11/15/2000	Technovative Marketing, Inc.	3 years	Escient
63-2003-1177	10/24/2000	Postech, inc.	3 years	Escient
63-2003-1178	1/10/2001	Texas Instruments	3 years	Non-Escient
63-2003-1178.A1	12/20/2001	Texas Instruments	3 years	Non-Escient
63-2003-1179	1/18/2001	Onex	3 years	Escient
63-2003-1181	1/11/2001	Texas Instruments	3 years	Non-Escient
63-2003-1181.A1	12/20/2001	Texas Instruments	3 years	Non-Escient
63-2003-1182	1/15/2001	Sega	5 years	Non-Escient
63-2003-1183	1/31/2001	Food.com	3 years	Escient
63-2003-1184	12/22/2000	The Usability Group	3 years	Escient
63-2003-1185	11/30/2000	Tomen Corporation	3 years	Escient
63-2003-1186	12/1/2000	Upstram Network	3 years	Escient
63-2003-1189	3/7/2001	IM Networks	3 years	Escient
64-2003-1190	2/28/2001	Open G, LLC	3 years	Escient
64-2003-1191	2/13/2001	Quantum Corp	3 years	Escient
64-2003-1192	2/23/2001	Intel Corp	5 years	Non-Escient
64-2003-1193	2/21/2001	Netgear	5 years	Non-Escient
64-2003-1194	4/19/2001	RCN Telecom Services	3 years	Non-Escient
64-2003-1195	4/20/2001	Spatializer Audio Labs	3 years	Escient
64-2003-1197	4/4/2001	MoodLogic, Inc.	3 years	Escient
64-2003-1198	3/22/2001	Reptron	3 years	Escient
64-2003-1199	4/17/2001	Accelerant, Inc.	3 years	Escient
64-2003-1200	2/16/2001	Kenwood	3 years	Escient
64-2003-1201	3/26/2001	Mike Saurage	3 years	Escient
64-2003-1202	4/4/2001	Lydstrom, Inc.	3 years	Escient
64-2003-1203	4/9/2001	Sony	3 years	Escient
64-2003-1205	4/27/2001	Jasmine Alexander	3 years	Escient
64-2003-1206	4/4/2001	Dotcast, Inc.	3 years	Escient
64-2003-1207	4/23/2001	SRS Labs	3 years	Non-Escient
64-2003-1208	4/26/2001	Cambridge Soundworks	3 years	Escient
64-2003-1209	5/5/2001	NetRadio	None	Non-Escient
64-2003-1210	5/2/2001	Philips International BV	10 years	Non-Escient

64-2003-1211	5/17/2001	HiFinity Systems	3 years	Escient
64-2003-1212	5/10/2001	Command Equity Group	3 years	Escient
64-2003-1213	5/14/2001	Radio Free Virgin	3 years	Escient
64-2003-1214	4/17/2001	National Support Center LLC	3 years	Escient
64-2003-1215	6/5/2001	US Robotics	3 years	Non-Escient
64-2003-1216	4/20/2001	Kepro International	3 years	Escient
64-2003-1217	5/30/2001	Access Systems	3 years	Non-Escient
64-2003-1218	6/7/2001	National SemiConductor	3 years	Non-Escient
64-2003-1219	8/3/2001	TerLogic, Inc.	3 years	Non-Escient
64-2003-1220	8/8/2001	Silicon Image, Inc.	4 years	Non-Escient
64-2003-1221	7/25/2001	Vector Graphics, Inc.	3 years	Escient
64-2003-1222	6/19/2001	Sirius Satellite Radio, Inc.	3 years	Non-Escient
64-2003-1223	7/2/2001	Lumenati, Inc.	5 years	Non-Escient
64-2003-1224	6/11/2001	S&S Public Relations	3 years	Escient
64-2003-1225	7/10/2001	Avido Systems	3 years	Escient
64-2003-1226	7/16/2001	Full Audio Corp	3 years	Escient
64-2003-1227	7/13/2001	Walt Disney Seller	3 years	Non-Escient
64-2003-1228	7/3/2001	Arch Wirelss Holdings	2 years	Non-Escient
64-2003-1229	7/13/2001	Texas Instruments	3 years	Non-Escient
64-2003-1230	7/31/2001	Interactual	5 years	Non-Escient
64-2003-1231	9/12/2001	Avnet	3 years	Escient
64-2003-1232	9/12/2001	Pollstar	3 years	Escient
64-2003-1233	9/14/2001	Chris Hylmom	3 years	Escient
64-2003-1234	9/14/2001	John Dion Longworth	3 years	Escient
64-2003-1235	9/14/2001	Ac Dion deRose	3 years	Escient
64-2003-1236	9/14/2001	Zauneer Bade	3 years	Escient
64-2003-1237	8/29/2001	Reciprocal	3 years	Escient
64-2003-1238	9/25/2001	Young & Laramore	3 years	Escient
64-2003-1238	9/12/2001	Loudeye	5 years	Escient
64-2003-1239	10/16/2001	IBM	3 years	Non-Escient
64-2003-1240	10/27/2001	Philips Electronics North America	3 years	Non-Escient
64-2003-1241	10/1/2001	Cogency Semiconductor	5 years	Non-Escient
64-2003-1242	10/11/2001	Interactive Objects	3 years	Escient
64-2003-1243	10/12/2001	Samsung Electronics	3 years	Escient
64-2003-1244	10/24/2001	Altera Corp	3 years	Escient
64-2003-1245	10/27/2001	Harman Kardon	3 years	Escient
64-2003-1246	11/5/2001	Matsushita Kotobuki	3 years	Escient
64-2003-1247	11/7/2001	Sagem SA	3 years	Non-Escient
64-2003-1248	12/3/2001	Sigma Designs	5 years	Non-Escient
64-2003-1249	11/9/2001	Creative Labs	30 day notice	Non-Escient
64-2003-1250	3/4/2002	Uniden America Corporation	3 years	Non-Escient
64-2003-1251	12/5/2001	RF Micro Devices	5 years	Non-Escient
64-2003-1252	12/3/2001	Globespan, Inc.	5 years	Non-Escient
64-2003-1253	12/17/2001	Venkel, LTD	3 years	Escient
64-2003-1254	1/29/2002	Monster Cable Products, Inc.	3 years	Escient
64-2003-1255	1/17/2002	Sonicblue	3 years	Non-Escient
64-2003-1256	1/25/2002	I/O Magic	3 years	Escient
64-2003-1257	1/29/2002	Planetweb	3 years	Escient
64-2003-1258	1/29/2002	MPMan	3 years	Escient
64-2003-1259	1/31/2002	David Bott	3 years	Escient

64-2003-1260	2/4/2002	Michael Adell	3 years	Escient
64-2003-1261	2/5/2002	Iomega	4 years	Non-Escient
64-2003-1262	2/21/2002	GoDot	3 years	Escient
64-2003-1263	2/1/2002	Dana Innovations	3 years	Escient
64-2003-1264	2/20/2002	Rainbow Partners	3 years	Escient
64-2003-1265	3/13/2002	Jellyvision	3 years	Non-Escient
64-2003-1266	3/25/2002	Texas Instruments	3 years	Non-Escient
64-2003-1267	4/17/2002	D-Link Systems	5 years	Non-Escient
64-2003-1268	3/22/2002	Broadcastle Corp	3 years	Escient
64-2003-1269	5/30/2002	Time Warner Entertainment Co	1 year	Non-Escient
64-2003-1270	4/29/2002	Lugh Networks	3 years	Escient
64-2003-1271	5/29/2002	Bose Corporation	5 years	Non-Escient
64-2003-1272	7/22/2002	US Robotics	3 years	Non-Escient
64-2003-1272	9/3/2002	Monster Cable Products, Inc.	3 years	Escient
64-2003-1273	9/30/2002	MusicMatch	3 years	Non-Escient
64-2003-1274	11/12/2002	Efficient Networks, Inc.	1 year	Non-Escient
64-2003-1275	7/1/2002	Listen.com, Inc.	2 years	Escient
64-2003-1276	10/22/2002	Macromedia	30 day notice	Non-Escient
64-2003-1277	10/15/2002	Zoran	5 years	Non-Escient
64-2003-1278	7/19/2002	Boston Acoustics Inc	2 years	Non-Escient
64-2003-1279	10/15/2002	Yahoo! Inc	30 day notice	Non-Escient
64-2003-1280	5/20/2002	Intersil Corporation	5 years	Non-Escient
64-2003-1281	10/28/2002	D&M Holdings	2 years	Escient
64-2003-1282	11/11/2002	USBX Advisory Services, LLC	2 years	Escient
64-2003-1283	11/11/2002	Ripplewood Holdings LLC	2 years	Escient
64-2003-1284	10/9/2002	Escient Convergence Corp	3 years	Escient
64-2003-1285	1/6/2003	Gigafast Ethernet	3 years	Escient
64-2003-1286	1/6/2003	Mototech Inc	3 years	Escient
64-2003-1287	1/14/2003	Motorola Inc.	3 years	Non-Escient
64-2003-1288	1/17/2003	Sony Electronics Inc.	3 years	Escient
64-2003-1289	3/3/2003	The Linksys Group, Inc.	2 years	Non-Escient
64-2003-1290	2/11/2003	Cirrus Logic, Inc.	3 years	Non-Escient
64-2003-1291	1/17/2003	Bromax Communication	3 years	Escient
64-2003-1292	1/30/2003	ATLM Taiwan Inc	3 years	Escient
64-2003-1293	1/29/2003	Cyber TAN Tech Inc.	3 years	Escient
64-2003-1294	1/6/2003	ST&T Corporation	3 years	Escient
64-2003-1295	3/24/2003	Sony Electronics	3 years	Escient

Schedule 1.03
Permitted Encumbrances

None.

Schedule 2.01
Certain Tangible Acquired Assets

See attached fixed asset schedule, dated as of February 28, 2003.

Schedule 2.03(k)
Miscellaneous Excluded Assets

None.

Schedule 2.04(i)
Jones Guarantees

Scott A. Jones has provided a personal guarantee, in the amount of \$1,000,000, under the terms of numbered paragraph 8 of that certain Development and License Letter of Intent, dated September 20, 2002, by and among Seller, Scott A. Jones and Thomson Multimedia, Inc.

Schedule 2.04(iii)
Accounts Payable

Alliance Entertainment Corp.
Andrews, Matt
Ansburg, Abbie
ANT Limited
Arrow Electronics, Inc.
Avnet, Inc.
Bach Sales
Bishop Audio Services
Cable Concepts, Inc.
Cablemaster Inc.
Capitol City Container Corp.
CEDIA
Communications Products Inc.
Consumer Electronics Association
Coulter, Ernie
Creative Marketing Associates Inc.
Custom Solutions International
Cybersys Integration Technology, Inc.
Dygert, Tim
Federal Express Corporation
First International Computer, Inc.
Flannigan & Associates Inc
Frank, Jef
Gabbert, Tom
Garretson, Kevin
Geartner and Associates Inc.
Gracenote
Graham, Aaron
Hamilton, Pat
Hansen, Nicole
Home Entertainment Design
Indiana Department of Revenue
Ingram Micro
Innovative Business Solutions
International CES
Intertek Testing Services NA, Inc.
KA Marketing Inc
Katz, Sapper & Miller, LLP
Laser's Edge
Lederman, Kristin
Loudeye
Macrovision Corp.
Marion County Treasurer
MK Rep, Inc.
Momentum Group, Inc
Northwest Marketing, LLC
Novidor & Firestone Inc.

NuTech
Pankratz, Bob
PARA
Rainbow Partners, Inc.
Reliance Standard Life Insurance Co.
Reptron Manufacturing Services, Inc.
Reptron Engineering Services, Inc.
Rutz, Paul
Selwa, Paul
Sepaniak, Bernie
Sound Choice Marketing
Sprint
Staas & Halsey LLP
Tandem Marketing, Inc.
Tech Data Corp.
Time Warner Telecom
United Parcel Service
Vision Service Plan

Schedule 2.04(v)
Accrued Expenses

Accrued Vacation Expense
Accrued Warranty Expense
Deferred Revenue

Schedule 2.08
Allocation of Purchase Price

Purchaser and Seller agree to use their commercially reasonable best efforts to mutually agree upon the allocation of the Asset Purchase Price promptly following closing. In the event Purchaser and Seller cannot mutually agree upon the appropriate allocation, Purchaser shall select and, at its sole expense, engage an independent appraiser, which is reasonably acceptable to Seller, to determine such allocation, which determination shall be final and binding upon both Purchaser and Seller.

Schedule 3.02(g)
Key Employees

Bernard G. Sepaniak, Jr.
Michael Flockenhaus

Schedule 3.02(i)
Non-Competition and Option Employees

Boswell, Alissa
Bouterse, Robert
Cafrelli, Charles
Daly, Daniel M.
Dygert, Timothy
Emerson, F. Matthew
Frank, Jeffrey E.
Graham, Aaron
Hyatt, Richard
Kassebaum, William
McConnell, Andrew
Olague, Craig A.
Paxton, Phillip
Pierce, Daniel
Rawlins, Clark
Stern, David L.
Stiller, Thomas
Talatinian, Gerard
Vetter, Laura
Wachter, Martin R.
Yawn, Nathan A.

Schedule 3.02(l)
Option Employees

Commons, Christopher
Flockenhaus, Michael
Sepaniak, Bernard G.

Schedule 3.02(m)
Certain Consents to Assignments

1. ANT Limited (Development and License Agreement dated April 10, 2001).
2. Gracenote, Inc. (Gracenote License and Preferred Integrator Agreement dated April 21, 2003).
3. Compaq Computer Corporation (Development Agreement dated June 2, 2000).
4. Digital Theater Systems, Inc. (Digital Out Trademark License Agreement dated February 3, 2000).
5. International Business Machines Corporation (Development and License Agreement dated September 13, 2000).
6. International Business Machines Corporation (License Agreement dated October 16, 2001).
7. Teralogic, Inc. (Development Kit Agreement dated August 21, 2001).
8. Texas Instruments Incorporated (Audio Development and License Agreement dated July 31, 2001).
9. Texas Instruments Incorporated (Internet Audio Products Agreement dated January 1, 2001).
10. Broadcom HomeNetworking, Inc. (Source Code License Agreement dated August 15, 2000).
11. Microsoft Corporation (Windows Media Network Protocols Limited License Agreement dated April 19, 2001).
12. Kenwood (Product Development and License Agreement, including Addendum as of December 17, 2002, dated March 27, 2001).
13. Sirius Radio Inc. (Music Tuning Service License Agreement dated January 4, 2002).
14. Rainbow Partners (Exclusive Marketing Representation Agreement dated November 15, 2002).
15. Nichols (Lease Agreement for Office Furniture dated October 19, 2000).

Schedule 4.04
Required Consents and Approvals

1. See Schedule 3.02(m).
2. See Schedule 4.16(c).
3. Consent of National City Bank required under the terms of that certain Credit Facilities Agreement, dated July 3, 2001, by and between Seller and National City Bank for the release of all liens on the assets of Seller, which is being obtained simultaneously with the Closing.
4. Board of Directors and Stockholder approvals, all of which have been obtained prior to the consummation of the transaction.

Schedule 4.05
Financial Statements

1. Unaudited balance sheet as of December 31, 2002 and related statement of operations and cash flows for period then ended:

OpenGlobe, Inc.**Balance Sheet**

As of December 31, 2002

Assets		
Current assets:		
Cash	\$183,274	
Accounts receivable, net	253,627	
Unbilled accounts receivable	0	
Intercompany receivables	0	
Inventories	0	
Prepaid & other current assets	<u>114,689</u>	
Total current assets		551,590
Property & equipment	1,069,692	
Less: accum. depreciation	<u>(747,146)</u>	
Net property & equipment		322,546
Excess costs over net assets acquired		1,310,371
Identifiable intangibles, net		85,280
Other long term assets		<u>0</u>
Total assets		<u>2,269,787</u>
Liabilities		
Current liabilities		
Accounts payable	419,615	
Intercompany payable	430,776	
Accrued comp./related expenses	233,730	
Accrued liabilities	81,315	
Deferred revenue	842,419	
Capital leases & other senior debt	11,900,000	
Other current liabilities	<u>0</u>	
Total current liabilities		13,907,855
Capital leases & other senior debt - LT	0	
Other long term liabilities	<u>0</u>	<u>0</u>
Total liabilities		13,907,855
Shareholder's equity		
Capital stock	960,736	
Additional paid in capital	17,402,664	
Retained earnings	<u>(30,001,468)</u>	
Total equity		<u>(11,638,068)</u>
Total liabilities & equity		<u>2,269,787</u>

OpenGlobe, Inc.**Income Statement**

For the Twelve Months Ending December 31, 2002

Revenue	\$1,854,240	
Cost of Goods Sold	<u>976,685</u>	
Gross Margin		877,555
Operating Expense:		
General and Administrative	1,836,234	
Development	3,969,591	
Sales & Marketing	<u>1,193,503</u>	
Total Operating Expense		<u>6,999,328</u>
Operating profit (EBIT)		(6,121,773)
Interest expense / (income)		224,831
Other expense		6,397
(Gain) / loss on asset sale		<u>35,426</u>
Income before tax		(6,388,427)
Income tax		<u>1,450</u>
Net Income		<u>(6,389,877)</u>

OpenGlobe, Inc.
Cash Flow Statement
For Twelve Months Ending December 31, 2002

Cash flow from operating activities:

Net income	(6,389,876)
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Adjustments to reconcile net income to cash flow from operations:

Depreciation & amortization	139,294
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Changes in assets & liabilities:

Accounts receivable	8,543
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Other current assets	599,557
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Accounts payable	413,306
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Other current liabilities	<u>4,563,459</u>
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Net cash flow from operating activities	(665,717)
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Cash flow from investing activities:

Net investment in fixed assets	280,339
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Net investment in other long term assets	<u>11,305</u>
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Net cash flow from investing activities	291,644
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Cash flow from financing activities:

Net proceeds from investment from parent	-
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Net proceeds from capital investment	560,000
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Net proceeds from (payments on) senior financing	(904)
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Net proceeds from (payments on) other LT liabilities	<u>-</u>
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Net cash flow from financing activities	559,096
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Net change in cash	185,023
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Cash - beginning balance	(1,750)
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Cash - ending balance	<u><u>183,273</u></u>
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2. Unaudited balance sheet as of February 28, 2003:

OpenGlobe
Balance Sheet
as of February 28, 2003

ASSETS*Current Assets*

Cash	\$	57,630
Accounts receivable, net		116,404
Intercompany receivable		-
Inventories		-
Prepaid & other current assets		98,343
Total current assets		272,378

Property & equipment		1,069,691
Less accumulated depreciation		(798,625)
Net property & equipment		271,066

Goodwill & intangible assets, net		1,395,650
Intercompany investment		-
Other long term assets		-
Total assets	\$	1,939,093

LIABILITIES & STOCKHOLDERS' EQUITY*Current liabilities*

Accounts payable	\$	318,013
Intercompany payable		465,002
Accrued liabilities		462,667
Deferred revenue		734,167
Line of credit - current		-
Capital leases & other senior debt - current		12,903,034
Other current liabilities		-
Total current liabilities		14,882,883

Line of credit - long term		-
Capital leases & other senior debt - long term		-
Other long term liabilities		-
Total liabilities		14,882,883

Stockholders' Equity

Capital stock		960,736
Additional paid in capital		17,402,664
Retained earnings		(28,506,511)
Net income - allocation		(2,800,679)
Total stockholders' equity		(12,943,790)

Schedule 4.06
Absence of Certain Changes or Events

1. Various unsecured loans made to Seller by Scott A. Jones which, as of March 31, 2003, amount to approximately \$470,000 in the aggregate.
2. Resignation of Cynthia McElroy, Accounts Payable Clerk, effective March 21, 2003.
3. Seller owed past due property taxes, in the amount of \$1,946, to the City of Greenville, South Carolina and past due sales taxes, in the amount of \$5,199, to the Indiana Department of Revenue. The Indiana Department of Revenue imposed a lien against Seller's assets as a result of the past due sales taxes referenced above. Seller has now paid all such amounts to the City of Greenville and the Indiana Department of Revenue; however, the Indiana Department of Revenue will not process its receipt of the payment for a period of 4 – 6 weeks, therefore, the tax lien will still be reflected in a UCC search of Seller. Seller has not been advised of any unpaid fines or penalties related to the foregoing.
4. Entered into a License and Preferred Integrator Agreement by and between the Company and Gracenote, Inc. effective April 21, 2003.
5. Entered into a Second Amendment to the Audio Development and License Agreement by and between the Company and Texas Instruments effective April 21, 2003.
6. Delays in payment of payables as required to preserve cash for operations. Such payables as of April 22, 2003 are as follows:

Vendor	Name	Amount	Over 60 Days	Over 90 Days	Over 120 Days
ANT-004	ANT Limited	1,356.00	0.00	1,356.00	0.00
Sta-001	Staas & Halsey LLP	5,445.22	0.00	0.00	5,445.22
Tim-003	Time Warner Telecom	4063.63	3,315.52	0.00	0.00
Cal-003	Calderon Brothers Vending Co.	317.71	317.71	0.00	0.00
Ern-001	Ernst & Young LLP	2,899.57	0.00	0.00	2,899.57
Kin-003	Kinko's Inc.	765.85	765.85	0.00	0.00
Lon-001	Lonergan Associates	6,000.00	6,000.00	0.00	0.00
Pen-002	Penguin Drinking Water Systems, Inc.	445.20	111.30	333.90	0.00
Pla-001	Planet 10 Studios	5,020.01		396.50	4623.51
Thr-001	Threshold Technologies	477.76	0.00	0.00	477.76
Arr-004	Arrowhead Mountain Spring Water	314.49	10.00	0.00	304.49
Bel-003	Bell South	2,455.31	0.00	0.00	2,455.31
Cor-002	Cort Furniture Rental	661.98	0.00	0.00	661.98
DEL-001	Dell Marketing LP	143.09	0.00	0.00	143.09
E*T-001	E*TRADE Business Solutions	1,995.00	0.00	0.00	1,995.00
Ind-009	Indiana Newspapers, Inc.	296.80	0.00	0.00	296.80

Lea-001	Leapfrog Communications	787.50	0.00	0.00	787.50
MAR-005	MarTech Sales Seller	13,211.74	0.00	0.00	13,211.74
Mar-010	Marconi Radio	654.54	0.00	0.00	654.54
McD-001	McDermott Will & Emery	2,550.00	0.00	0.00	2,550.00
MCI-002	Worldcom	30,138.30	5495.16	16,792.71	7,850.43
Nat-005	National Support Center, LLC	22,500.00	0.00	0.00	22,500.00
Pin-001	Pinnacle Partners LLC	9,916.00	0.00	0.00	9,916.00
S&S-001	S&S Public Relations, Inc.	6,083.71	0.00	0.00	6,083.71
You-001	Young & Laramore Inc.	70,955.43	0.00	0.00	70,955.43

Schedule 4.07
Tax Matters

1. Seller has not yet filed the required State and Federal income tax returns for 2002. Extensions have been filed.

Schedule 4.08
Other Undisclosed Liabilities

The following computer software audit schedule reflects software used by Seller relative to the number of licenses held by Seller and available for such use:

APPLICATION	USED	OWNED	NEEDED	COST	TOTAL
Adobe Acrobat 5.0	3	0	3	\$240.09	\$720.27
AutoCAD 2000i	2	0	2	\$637.30	\$1,274.60
Crystal Reports 8	4	0	4	\$421.86	\$1,687.44
Easy CD Creator (Roxio)	2	0	2	\$83.01	\$166.02
Exchange 5.5	1	1	0	\$629.00	\$0.00
Exchange 5.5 CAL	60	25	35	\$60.50	\$2,117.50
Frontpage	1	0	1	\$102.50	\$102.50
Office Pro	39	1	38	\$409.00	\$15,542.00
PhotoShop	2	1	1	\$594.00	\$594.00
Publisher 2000	2	0	2	\$77.50	\$155.00
SourceSafe	1	0	1	\$366.00	\$366.00
SQL Anywhere	1	0	1	\$315.00	\$315.00
SQL Server	9	3	6	\$599.00	\$3,594.00
SQL 2000 CAL	10	0	10	\$131.50	\$1,315.00
Visio 2002 (standard)	10	4	6	\$144.50	\$867.00
Windows 2000 Server	10	1	9	\$664.00	\$5,976.00
Windows 2000 Server CAL	44	25	19	\$27.00	\$513.00
Windows 2000 Professional	44	34	10	\$267.36	\$2,673.60
Windows XP Professional	1	0	1	\$273.81	\$273.81
WS-FTP	1	0	1	\$39.95	\$39.95
Total					\$36,297.82

Schedule 4.11(a)
Registered IP

1. Patents

- i. 1617.1001 and 1617.1001.JP: Playback device having text display and communication with remote database of titles, 6,304,523 (awarded in U.S., filed in Japan).
- ii. 1617.1001CIP and 1617.1001CIPPCT: Playback device having text display and communication with remote database of titles new embodiments (filed U.S. and ex-U.S.).
- iii. 1617.1002: Automated control of electronic devices, 6,469,633 (awarded in U.S.)
- iv. 1617.1003 and 1617.1003PCT: Automated assignment and tuning of radio call letters to radio presets, 6,539,210 (to be awarded in U.S. 3/25/2003, international application abandoned).
- v. 1617.1004 and 1617.1004PCT: Apparatus, method and database for control of audio/video equipment, filed (awaiting first office action in U.S., international application abandoned).
- vi. 1617.1005 and 1617.1005PCT: Data PowerLine Network, filed (awaiting first office action in U.S., international application abandoned).
- vii. 1617.1006, 1617.1006CA, 1617.1006EP, 1617.1006JP: DVD Title Input Using OSD, filed (awaiting first office action in U.S., Need to request examination in ex-U.S.).
- viii. 1617.1007, 1617.1007PCT: DVD Database Search Techniques, filed. (awaiting first office action, will need to file national applications).

2. Trademarks

- i. CE-Commerce, 2,499,205, registered
- ii. CE-Commerce, 2,535,017, registered
- iii. Entertain Simplicity, 78/038,385, allowed
- iv. OG Design, 78/037,469, allowed
- v. OpenGlobe, 75/889,696, approved for publication
- vi. OpenGlobe design, 2,673,257, registered
- vii. Entertain Simplicity, 78/038,391, allowed
- viii. OpenGlobe, 2,577,189, registered

3. Domain Names

- i. netmix.com; neatmix.net; neatmix.org
- ii. openglobe.com; openglobe.net
- iii. cdchanger.com

4. Claims and Actions

- i. Seller received inquiries relating to the use of the domain site www.openglobe.net in March 29, 2001 and again on or about January 24, 2002. No specific actions have been taken

Schedule 4.11(b)
Actions; Restrictions on Transfer; Encumbrances

1. Consent of National City Bank required under the terms of that certain Credit Facilities Agreement, dated July 3, 2001, by and between Seller and National City Bank for the release of all liens on the assets of Seller, which is being obtained simultaneously with the Closing.
2. Seller received inquiries relating to the use of the domain site www.openglobe.net in March 29, 2001 and again on or about January 24, 2002. No specific actions have been taken.
3. Board of Directors and Stockholder approvals, all of which have been obtained prior to the consummation of the transaction.
4. Certain consents to assignment required as set forth on Schedule 3.02(m).

Schedule 4.11(c)
Required Actions; Acquisitions of Intellectual Property

Required Actions w/in Next 60 Days:

1. Application for new embodiments of Embedded TuneBase has a Demand for International Preliminary Examination due May 15, 2003.
2. PCT patent application for DVD database search techniques by Chris Commons (Docket No. 1617.1007PCT) may be able to have corresponding national applications filed by May 5, 2003, depending upon effect of change in treaty (i.e., Seller opted not to file such applications on their 20-month due date; however, due to changes in the law of certain countries which now allow filings up to the 30-month due date even if a Demand for International Preliminary Examination has not been filed, certain filings may still be available. Whether these filings are possible will depend upon how and when the laws were effective in each applicable country to implement the change in the treaty.)
3. Statement of Use (or Extension to File Statement of Use) with respect to "Entertain Simplicity" mark (Serial No. (US) 78/038,391) must be filed with the PTO by June 25, 2003 or such mark will be deemed abandoned by the PTO.

Acquired Business IP:

1. Wachter Engineering Assets:

All system designs, technologies, electrical designs and schematics, physical designs, software, user interfaces, peripherals, documentation, packaging, inventions (both patentable and unpatentable), ideas, implementations, tangible assets, copyrights and trademarks obtained as a result of the March 1, 1999 acquisition of Wachter Engineering, including Home Theater Control Software, Keyspan IR Card, iControl.

2. AVActive and Cirrus Logic Assets:

All system designs, technologies, electrical designs and schematics, physical designs, software, user interfaces, peripherals, documentation, packaging, inventions (both patentable and unpatentable), ideas, implementations, tangible assets, copyrights and trademarks obtained as a result of the July 1, 1999 acquisition of avActive, LLC, including the "Avalon" web theater demonstration platform and derivatives and the "Bravo" web theater demonstration platform and derivatives.

3. Urocket Assets:

All system designs, technologies, electrical designs and schematics, physical designs, software, user interfaces, peripherals, documentation, packaging, inventions (both patentable and unpatentable), ideas, implementations, tangible assets, copyrights and trademarks obtained as a result of the June 2, 2000 asset purchase agreement with Urocket, Inc. and UR Music Investments, LLC, including "Sicily" Internet Music Management System; "Venice" Internet Music Player; "Corsica" Internet Music Player; inventions relating to the concept of an Internet-connected music management or jukebox device with removable media; inventions and ideas for the use of a removable hard drive to "shuttle" music content between the home stereo component and a PC, car stereo, or other home stereo components; inventions and ideas for remote management of music collections with a back end service; inventions and ideas for the concept where a client running an API can "learn and adapt" to changing service capabilities; inventions and ideas covering various business methods for synchronizing profile data, movement of the data from servers to client devices and vice-versa, and data transformations covering content, suppliers of content, customer lead generation, advertising and promotion; inventions and ideas covering concepts for preference attributes, inclusive of statistical filtering and weighting of relative importance and mutability, and mapping against pre-existing profile data and demographics.

4. PowerPlay Technology:

All system design, technologies, electrical designs and schematics, physical designs, software, user interfaces, peripherals, documentation, packaging invention (both patentable and unpatentable), ideas and general implementation of the DVD auto-recognition technology, excluding DVD transport technology that is specifically owned by PowerFile, Inc., transferred to Seller as a result of the December 31, 1999 reorganization of Escient, Inc.

5. Server Technologies for TuneBase and PowerPlay Services: Each of the following intellectual property rights were transferred to Seller as a result of the December 31, 1999 reorganization of Escient, Inc.:

DVD Data server. A PHP3 and the MySQL database that work together to serve DVD data to the clients. The PHP3 script receives XML data from the client and performs multiple fuzzy searches of the database to find a match.

User Database. When a user registers, their data is stored in this Access database.

User Data Storage. Downloads users' databases and covers for backup on servers.

Schedule 4.11(d)
Title/ License to Use Intellectual Property

1. The following computer software audit schedule reflects software used by Seller relative to the number of licenses held by Seller and available for such use:

APPLICATION	USED	OWNED	NEEDED	COST	TOTAL
Adobe Acrobat 5.0	3	0	3	\$240.09	\$720.27
AutoCAD 2000i	2	0	2	\$637.30	\$1,274.60
Crystal Reports 8	4	0	4	\$421.86	\$1,687.44
Easy CD Creator (Roxio)	2	0	2	\$83.01	\$166.02
Exchange 5.5	1	1	0	\$629.00	\$0.00
Exchange 5.5 CAL	60	25	35	\$60.50	\$2,117.50
Frontpage	1	0	1	\$102.50	\$102.50
Office Pro	39	1	38	\$409.00	\$15,542.00
PhotoShop	2	1	1	\$594.00	\$594.00
Publisher 2000	2	0	2	\$77.50	\$155.00
SourceSafe	1	0	1	\$366.00	\$366.00
SQL Anywhere	1	0	1	\$315.00	\$315.00
SQL Server	9	3	6	\$599.00	\$3,594.00
SQL 2000 CAL	10	0	10	\$131.50	\$1,315.00
Visio 2002 (standard)	10	4	6	\$144.50	\$867.00
Windows 2000 Server	10	1	9	\$664.00	\$5,976.00
Windows 2000 Server CAL	44	25	19	\$27.00	\$513.00
Windows 2000 Professional	44	34	10	\$267.36	\$2,673.60
Windows XP Professional	1	0	1	\$273.81	\$273.81
WS-FTP	1	0	1	\$39.95	\$39.95
Total					\$36,297.82

2. Seller received inquiries relating to the use of the domain site www.openglobe.net in March 29, 2001 and again on or about January 24, 2002. No specific actions have been taken.

Schedule 4.11(e)
IP Licenses and Agreements

1. Development and License Agreement by and between Seller and Escient Convergence Corp. effective January 3, 2002.
2. Maintenance Agreement by and between Seller and Escient Convergence Corp. effective February 1, 2001.
3. Database License and Consumer Direct Fulfillment Services Agreement by and between Seller and AEC One Stop Group, Inc. dated October 16, 2000.
4. Supplemental Agreement by and between Seller and AEC One Stop Group, Inc. dated October 16, 2000.
5. Development and License Agreement by and between Seller and ANT Limited dated April 10, 2001.
6. Patent Cross-License Agreement by and between Seller and CDDDB, Inc. d/b/a Gracenote effective as of July 23, 2001, as modified by that certain Gracenote License and Preferred Integrator Agreement, dated April 16, 2003, by and between Seller and Gracenote, Inc.
7. License and Database Access Agreement by and between Seller and CDDDB, Inc. dated June 23, 2000, as modified by that certain Gracenote License and Preferred Integrator Agreement, dated April 16, 2003, by and between Seller and Gracenote, Inc.
8. Gracenote License and Preferred Integrator Agreement, dated April 16, 2003, by and between Seller and Gracenote, Inc.
9. Development Agreement by and between Seller and Compaq Computer Corporation effective as of June 2, 2000.
10. Digital Out Trademark License Agreement by and between Seller and Digital Theater Systems, Inc. effective February 3, 2000.
11. Client Agreement by and between Seller and Enso Audio Imaging Corporation dated June 14, 1999.
12. Digital Audio System License Agreement by and between Seller and Dolby Laboratories Licensing Corporation and K-Byte Manufacturing effective May 4, 2000.

13. Dolby Consumer Surround Decoder by and between Seller and Dolby Laboratories Licensing Corporation and K-Byte Manufacturing effective May 4, 2000.
14. Development and License Agreement by and between Seller and International Business Machines Corporation effective September 13, 2000.
15. License Agreement by and between Seller and International Business Machines Corporation effective as of October 16, 2001.
16. Product Development and License Agreement, including Addendum as of December 17, 2002 by and between Seller and Kenwood dated March 27, 2001.
17. Memorandum of Understanding by and between Seller and TTC, Inc. and Thomson multimedia Inc., effective March 26, 2002.
18. Music Tuning Service License Agreement by and between Seller and Sirius Radio Inc. dated January 4, 2002.
19. Development Kit Agreement by and between Seller and Teralogic, Inc. dated August 21, 2001.
20. Audio Development and License Agreement by and between Seller and Texas Instruments Incorporated effective July 31, 2001.
21. Internet Audio Products Agreement by and between Seller and Texas Instruments Incorporated effective January 1, 2001.
22. Internet Audio Products Software License Agreement by and between Seller and Texas Instruments Incorporated dated October 23, 2000.
23. Development and License Letter of Intent by and between Seller and Thomson Multimedia, Inc. dated September 20, 2002.
24. Product Development and License Agreement by and between Seller and Thomson Multimedia, Inc. dated March 18, 2002.
25. Music Tuning Service License Agreement by and between Seller and Radio Free Virgin, Inc. dated May 29, 2001.
26. Exclusive Marketing Representation Agreement by and between Seller and Rainbow Partners dated November 15, 2002.
27. License for Window Media Network Protocols by and between Seller and Microsoft Corporation dated April 19, 2001.

28. License Agreement by and between Escient Technologies, LLC and Matsushita Electric Industrial Co., LTD., dated September 9, 1999.
29. DVD Manufacturing License Agreement by and between Escient Technologies, LLC and Macrovision Corporation dated August 20, 1999.
30. Telecom Services Agreement for Local Exchange by and between Escient Technologies, LLC and Time Warner Telecom of Indiana LP dated October 2, 2002.
31. Telecom Services Agreement for Internet Access by and between Escient Technologies, LLC and Time Warner Telecom of Indiana LP dated October 2, 2002.
32. Development Agreement by and between Seller and RioPort dated August 15, 2000.
33. Development Agreement by and between Seller and Sony Corporation dated December 28, 2001.
34. Source Code License Agreement by and between Seller and Broadcom HomeNetworking, Inc, dated August 15, 2000.
35. Independent Contractor Agreement by and between Seller and Lonergan Associates dated January 23, 2003.
36. Assignment of Invention Agreements by and between Seller and each of the following:

Matthew Andrews, Abbie Ansborg, Alissa Boswell, Robert Bouterse, Charles Cafrelli, Christopher Commons, Daniel Daly, Timothy Dygert, F. Matthew Emerson, Michael Fadlevic, Michael Flockenhaus, Jeffery Frank, Aaron Graham, Nicole Hansen, Andrew Harper, Richard Hyatt, William Kassebaum, Dana Lenz, Craig Olague, Phillip Paxton, Daniel Pierce, Clark Rawlins, Bernard Sepaniak, Jr, David Stern, Doug Strachota, Gerard Talatinian, Martin Wachter, and Nathan Yawn.
37. See Non-Disclosure Agreements listed in Schedule 1.01.
38. Various acquisition agreements related to transactions described on Schedule 4.11(c)

Schedule 4.11(f)
Infringement

1. Seller received inquiries relating to the use of the domain site www.openglobe.net in March 29, 2001 and again on or about January 24, 2002. No specific actions have been taken.
2. See software audit information set forth on Schedule 4.11(d).

Schedule 4.11(g)
Security and Integrity of Systems

N/A.

Schedule 4.12
Labor Relations

1. Independent Contractor Agreement by and between Seller and Lonergan Associates dated January 23, 2003.
2. Employment Agreements by and between Seller and each of the following:

Matthew Andrews, Abbie Ansborg, Alissa Boswell, Robert Bouterse, Charles Cafrelli, Christopher Commons, Daniel Daly, Timothy Dygert, F. Matthew Emerson, Michael Fadlevic, Michael Flockenhaus, Jeffery Frank, Aaron Graham, Nicole Hansen, Andrew Harper, Richard Hyatt, William Kassebaum, Dana Lenz, Craig Olague, Phillip Paxton, Daniel Pierce, Clark Rawlins, Bernard Sepaniak, Jr., David Stern, Doug Strachota, Gerard Talatinian, Martin Wachter, and Nathan Yawn.
3. Employment offer letters which were not formalized into "employment agreements" for Laura Vetter and Andrew McConnell.
4. Employment Agreements by and between Seller and each of Christopher P. Commons (effective 9/23/96); Michael Flockenhaus (effective 2/12/01); Bernard G. Sepaniak, Jr. (effective 1/1/01) provide for severance payments upon termination. In addition, while Seller does not have any formal or written severance policy, Seller's most recent practice, in exchange for a general release agreement from the terminated employee, has been to provide terminated employees with two (2) weeks of severance pay and one (1) month of continued insurance coverage. Prior to Seller's cessation of its California operations in July, 2002, Seller had provided terminated employees with two (2) weeks of severance pay plus one (1) additional week for each year of service with Seller.
5. Certain state laws require payment of all accrued wages, which often includes "accrued vacation", upon termination of an employee's employment. At the Closing, Seller will terminate the employment of all of its employees and Purchaser will immediately offer to rehire such employees (with the exception of the employee listed on Schedule 6.02(b) of the Asset Purchase Agreement). Seller will not, however, pay cash to such employees for any accrued vacation benefits, rather Purchaser is assuming all such accrued vacation liabilities in accordance with Section 6.04(c) of the Asset Purchase Agreement.
6. Since inception Seller has had involuntary terminations outside of the closing of operations, the last occurring in December 2001. In addition, Seller closed operations in South Carolina operations in June 2002 and operations in California in July 2002. No WARN Act liability arose in connection with these closings.

Schedule 4.13
Benefit Plans

1. Group Health Insurance Agreement with Nippon Life Insurance Company of America effective February 1, 2003.
2. Group Vision Care Plan with VSP effective February 1, 2003.
3. Dental Insurance Plan with Guardian effective February 1, 2003.
4. Life and Voluntary Life Plan including AD&D, life, voluntary life, short term disability and long term disability with Reliance Standard Life effective February 1, 2003.
5. Employee Assist Program with WorldNet Services Corp. effective as of February 1, 2003.
6. Section 125 administration agreement with KBA benefits effective as of February 1, 2003.
7. OpenGlobe, Inc. 2000 Stock Incentive Plan.
8. The employees of Seller participate in the Escient Technologies, LLC 401(k) Plan. Concurrent with the transaction contemplated by the Agreement, all employees will be terminated from their employment with Seller and will no longer be able to contribute to the Escient Technologies, LLC 401(k) Plan.
9. Employment Agreements by and between Seller and each of Christopher P. Commons (effective 9/23/96); Michael Flockenhaus (effective 2/12/01); Bernard G. Sepaniak, Jr. (effective 1/1/01) provide for severance payments upon termination. In addition, while Seller does not have any formal or written severance policy, Seller's most recent practice, in exchange for a general release agreement from the terminated employee, has been to provide terminated employees with two (2) weeks of severance pay and one (1) month of continued insurance coverage. Prior to Seller's cessation of its California operations in July, 2002, Seller had provided terminated employees with two (2) weeks of severance pay plus one (1) additional week for each year of service with Seller.
10. Seller's vacation policy is as follows: All full-time employees receive 10 vacation days each year with an additional day for each year of service, accrued biweekly. Vacation time off is paid at the employee's base pay rate at the time of vacation. It does not include overtime or any special forms of compensation such as incentives, commissions, or bonuses. In the event that available vacation is not used by December 31 of any given year, employees may carry unused time forward to the next calendar year. Employees will be

allowed to accrue up to 1.5 times their annual vacation accrual. Once an employee has accrued 1.5 times his or her annual vacation accrual, no further vacation hours will accrue until the total unused vacation is less than 1.5 times his or her annual vacation accrual. For example, first year employees accrue 80 hours of vacation time annually, therefore, such first year employees are permitted to accrue up to a maximum of 120 hours of vacation. Once 120 hours of vacation has accrued, no further vacation hours will accrue until the total unused vacation is less than 120 hours. An employee with three years of service can accrue 96 hours of vacation annually, therefore, such third year employees are permitted to accrue up to a maximum of 144 hours of vacation.

Schedule 4.14
Licenses and Permits

1. Sales Tax License for the State of Indiana, number 20435420008.
2. Sales Tax License for the State of South Carolina terminated concurrent with the closure of operations in South Carolina and withdrawal of foreign corporate status effective October 10, 2002.

Schedule 4.15
Business Insurance

Seller participates in General Business Insurance coverage, including Workers' Compensation and General Liability under a plan provided for by Escient Technologies, LLC, the details of which are as follows:

<i>Coverage Description</i>	<i>Amount/Limit</i>	<i>Deductible</i>	<i>Seller</i>	<i>Policy No.</i>	<i>Policy Period</i>	<i>Premium</i>
Package General Liability Employee Benefits Property Crime	1M ea occ / 2M agg 1M ea claim / 2M agg 5,272,190 Blanket 100,000 Employee Theft	None 1,000 1,000 500	Federal Insurance Seller (Chubb)	35379506	April 1, 2002-2003	\$84,155
Workers Compensation Employers Liability	Statutory 1M BI ea Accident 1M BI by Disease / Policy Limit 1M BI by Disease / ea Employee	None	Federal Insurance Seller (Chubb)	71651925	April 1, 2002-2003	\$81,495
Umbrella	5M ea occ / agg <i>Underlying Policies:</i> • General Liability • Employee Benefits Liability • Employers Liability • Auto Liability	None	Federal Insurance Seller (Chubb)	79785722	April 1, 2002-2003	\$11,050
Business Auto	1M ea occ Combined Single Limit	\$1,000 Comp/Coll	Federal Insurance Seller (Chubb)	73504607	April 1, 2002-2003	\$18,399
401K Employee Dishonesty Bond	250,000	None	Travelers	103289541	April 1, 2000-2003	\$232
Directors & Officers Liability (Incl EPL)	5M ea claim / agg	None*	Executive Risk (Chubb)	75117350199	April 7, 1999-2003	\$105,300
Excess Directors & Officers Liability (2 nd Layer)	3M ea claim / agg	Excess of 5M	Agricultural Excess (AESIC)	NSX2422141	April 7, 1999-2002	\$46,880
Excess Directors & Officers Liability (2 nd Layer – Pending)	3M ea claim / agg	Excess of 5M	Greenwich Ins. Co.	ELU82449-02	April 7, 2002-2003	\$18,700
Excess Directors & Officers Liability (3 rd Layer)	4M ea claim / agg	Excess of 8M	Lumbermen's (Kemper)	3DY016173-00	April 7, 2001-2003	\$25,000

*\$25,000 deductible corporate reimbursement – per claim

\$25,000 deductible corporate reimbursement – per claim (Securities Claims)

\$25,000 deductible corporate reimbursement – per claim (EPL Claims)

Schedule 4.16(a)
Material Contracts

1. See Schedule 1.01, Schedule 4.11(e), Schedule 4.13, and Schedule 4.15.
2. Promissory Note issued to Seller from Escient Convergence Corp. on July 31, 2000 in the aggregate principal amount of \$1,200,500 with interest accruing at 10% per annum (five year balloon payment).
3. Promissory Note issued by Seller to Scott A. Jones, on December 16, 2002 in the aggregate principal amount of \$39,404.
4. Credit Agreement and related documentation entered into by and between Seller and National City Bank. Seller refinanced a credit facility (originally provided by Fifth Third Bank) with National City Bank NA on July 3, 2001 (the "Credit Facility"). The outstanding principal amount of the Credit Facility immediately prior to the Closing is \$11,900,000 (plus accrued interest), which amount has been collateralized by Mr. Scott A. Jones. The term of the Credit Facility expires on August 31, 2003.
5. Recruitment Services Agreement by and between Seller and TechSearch, dated November 1, 1999 (terminable upon 30 days prior written notice).
6. Marketing Representation Agreement by and between Seller and Novatec dated April 27, 2001 (terminable upon 30 days prior written notice).
7. Voting Agreement by and between Seller and URMUSIC dated July 31, 2001.
8. Letter Agreement regarding election of Board of Directors by and between Seller and URMUSIC dated July 31, 2001.
9. Registration Rights Agreement by and among Seller and its preferred stockholders dated July 31, 2001.
10. Investment Agreement by and among Seller and its preferred stockholders dated July 31, 2001.
11. Agreement regarding exchange of shares by and between Seller and URMUSIC dated July 31, 2001.
12. Recruitment Services Agreement by and between Seller and Redphone dated October 30, 2000.
13. Recruitment Services Agreement by and between Seller and Onex dated February 20, 2001.

14. Letter of Intent with Intel Capital regarding investment dated March 13, 2001.
15. Technical Support Agreement by and between Seller and National Support Center dated June 29, 2001.
16. Recruitment Services Agreement by and between Seller and Cerebral Connections dated April 6, 2001.
17. Agreement for fundraising services by and between Seller and James Meyer dated January 25, 2002.
18. Letter Agreement by and between Investec PMG Capital and Seller, dated May 29, 2002, providing that, in the event of a sale of all or substantially all of the assets of Seller, a success fee will be paid to Investec.
19. Source Code License Agreement by and between Seller and Broadcom HomeNetworking, Inc, dated August 15, 2000.
20. License for Window Media Network Protocols by and between Seller and Microsoft Corporation dated April 19, 2001.
21. Each of the following employees and consultants have been granted options under Option Agreements issued under the OpenGlobe, Inc. 2000 Stock Incentive Plan:

Alissa Boswell, Robert Bouterse, Charles Cafrelli, Ernest Coulter, Daniel Daly, Paul DeLacey, Leonard Doherty, Timothy Dygert, Michael Fadlevic, Michael Flockenhaus, Jeffrey Frank, Aaron Graham, Andrew Harper, Robyn Hise, Richard Hyatt, Dana Lenz, Andrew McConnell, Michael McRobbie, James Meyer, Craig Olague, Robert Pankratz, Phillip Paxton, Daniel Pierce, Clark Rawlins, Kristin Ross, Bernard Sepaniak, Jr., David Stern, Thomas Stiller, Douglas Strachota, Gerard Talatinian, Laura Vetter, and Nathan Yawn.

Schedule 4.16(b)
Assigned Contracts in Default

Seller has a significant number of accounts payable due to vendors which are over 60 days in arrears, as set forth on Schedule 4.06.

Schedule 4.16(c)
Consents Not Obtained

A. At the express request of Purchaser, Seller has not requested consents for assignment with respect to the following agreements:

1. Product Development and License Agreement, including Addendum as of December 17, 2002 by and between Seller and Kenwood dated March 27, 2001.
2. Music Tuning Service License Agreement by and between Seller and Sirius Radio Inc. dated January 4, 2002.
3. Exclusive Marketing Representation Agreement by and between Seller and Rainbow Partners dated November 15, 2002.

B. In addition, consents to the assignment of the following documents by Purchaser to Seller are in process (but have not been obtained) and will be obtained promptly following the Closing:

1. License Agreement by and between Escient Technologies, LLC and Matsushita Electric Industrial Co., LTD., entered into as of September 9, 1999.
2. DVD Manufacturing License Agreement by and between Escient Technologies, LLC and Macrovision Corporation as of August 20, 1999.
3. Development Agreement by and between Seller and Compaq Computer Corporation, dated June 2, 2000.
4. Digital Out Trademark License Agreement by and between Seller and Digital Theater Systems, Inc., dated February 3, 2000.
5. Development and License Agreement by and between Seller and International Business Machines Corporation, dated September 13, 2000.
6. License Agreement by and between Seller and International Business Machines Corporation, dated October 16, 2001.
7. Development Kit Agreement by and between Seller and Teralogic, Inc., dated August 21, 2001.
8. Source Code License Agreement by and between Seller and Broadcom HomeNetworking, Inc, dated August 15, 2000.

9. Windows Media Network Protocols Limited License Agreement by and between Seller and Microsoft Corporation, dated April 19, 2000.

Schedule 4.17
Largest Customers/Suppliers

Customers

1. Kenwood, \$699,638
2. Escient Convergence Corp., \$526,514
3. Thomson, \$295,608
4. Compaq, \$254,479
5. Texas Instruments, \$75,000
6. Monster Cable, \$3,000

Suppliers

1. AP-Knight LP, \$128,991
2. Young & Laramore, \$104,387
3. S&S Public Relations, Inc., \$75,566
4. Globix Corporation, \$67,344
5. Gracenote, \$59,874
6. Alliance Entertainment Corp., \$52,073
7. Ernst & Young LLP, \$51,219
8. Reptron Engineering Services, \$44,380
9. National Support Center, LLC, \$38,817
10. Staas & Halsey LLP, \$36,197

Schedule 4.18
Compliance with Laws

1. Certain state laws require payment of all accrued wages, which often includes "accrued vacation", upon termination of an employee's employment. At the Closing, Seller will terminate the employment of all of its employees and Purchaser will immediately offer to rehire such employees (with the exception of the employee listed on Schedule 6.02(b) of the Agreement). Seller will not, however, pay cash to such employees for any accrued vacation benefits, rather Purchaser is assuming all such accrued vacation liabilities in accordance with Section 6.04(c) of the Asset Purchase Agreement.

Schedule 4.19
Litigation

1. Seller received a letter dated October 4, 2002 from Young & Laramore for amounts payable that remained unpaid. No additional action has been taken.
2. Seller received inquiries relating to the use of the domain site www.openglobe.net in March 29, 2001 and again on or about January 24, 2002. No specific actions have been taken.

Schedule 4.20
Title to Acquired Assets

1. See Schedule 4.11(d).
2. Certain restrictions exist with respect to the Business IP that is licensed by Seller under the terms of the applicable IP Licenses.

Schedule 4.21
Real Property

Seller, together with Escient Convergence Corp., currently occupies or uses approximately 23,000 square feet of space at INTECH Park One, as provided under a lease agreement by and between Escient Technologies, LLC and INTECH Partners One, LLC.

Schedule 4.23
Broker's and Finder's Fees

Letter Agreement by and between Investec PMG Capital and Seller, dated May 29, 2002, providing that, in the event of a sale of all or substantially all of the assets of Seller, a success fee would be paid to Investec.

Schedule 4.25
Capitalization

Common Shares Outstanding	25,000,000
Preferred Shares Outstanding	
Series A-1	6,038,990
Series A-2	8,479,096
Total Preferred Shares Outstanding	<u>14,518,086</u>
Total Common and Preferred Shares Outstanding	39,518,086

Schedule 4.26
Product Warranties

Seller provides software-programming services for Original Equipment Manufacturers (OEMs) who in turn sell products to end-users. As such, Seller does not provide any warranties to any end users of products. Seller provides general warranties to OEMs relating to original creation of software but does not provide any warranty relating to fitness for use.

Schedule 6.02(a)
Former Seller Employees

Andrews, Matthew
Ansburg, Abbie
Boswell, Alissa W.
Bouterse, Robert
Cafrelli, Charles R
Commons, Christopher
Daly, Daniel M.
Dygert, Timothy
Emerson, F. Matthew
Fadlevic, Michael
Flockenhaus, Michael
Frank, Jeffrey E.
Gabbert, Thomas
Graham, Aaron
Hansen, Nicole M.
Harper, Andrew S
Hyatt, Richard
Kassebaum, William
Lenz, Dana R.
McConnell, Andrew
Olague, Craig A.
Paxton, Phillip W.
Pierce, Dan
Rawlins, Clark
Sepaniak, Bernard G
Stern, David
Stiller, Thomas
Strachota, Douglas P
Talatinian, Gerard
Troglen, Jacqueline A.
Vetter, Laura
Wachter, Martin R
Yawn, Nathan

Schedule 6.02(b)
Former Seller Employees Not to be Offered Employment

1. Strachota, Douglas P.
2. Gabbert, Thomas (Note: Mr. Gabbert will not be employed by Purchaser, but will enter into that certain Consulting Agreement, as defined in the Asset Purchase Agreement, with Purchaser.)

Schedule 6.03
COBRA Beneficiaries

Andrews, Matthew
Ansburg, Abbie
Boswell, Alissa W.
Bouterse, Robert
Cafrelli, Charles R
Commons, Christopher
Daly, Daniel M.
Dygert, Timothy
Emerson, F. Matthew
Fadlevic, Michael
Flockenhaus, Michael
Frank, Jeffrey E.
Gabbert, Thomas
Graham, Aaron
Hansen, Nicole M.
Harper, Andrew S
Hyatt, Richard
Kassebaum, William
Lenz, Dana R.
McConnell, Andrew
Olague, Craig A.
Paxton, Phillip W.
Pierce, Dan
Rawlins, Clark
Sepaniak, Bernard G
Stern, David
Stiller, Thomas
Strachota, Douglas P
Talatinian, Gerard
Troglen, Jacqueline A.
Vetter, Laura
Wachter, Martin R
Yawn, Nathan
Kukla, Steve
May, Jimmy
McElroy, Cynthia
Memmott, James

Schedule 6.04
Accrued Vacation

As of April 11, 2003 (additional amounts will have accrued between 4/11/03 and the Closing Date, which amounts will be assumed by Purchaser and included in the Closing Statement of Net Assets):

Name	Amount Accrued	Vacation Hours Accrued and Unused
Andrews, Matthew	\$1,398	78.58
Ansburg, Abbie	\$587	13.56
Boswell, Alissa W.	\$4,123	142.93
Bouterse, Robert	\$3,158	106.24
Cafrelli, Charles R	\$4,846	144
Commons, Christopher	\$12,300	240
Daly, Daniel M.	\$3,295	85.41
Dygert, Timothy	\$10,888	157.27
Emerson, F. Matthew	\$4,038	92.35
Fadlevic, Michael	\$1,523	42.25
Flockenhaus, Michael	\$9,409	134.97
Frank, Jeffrey E.	\$2,184	84.13
Graham, Aaron	\$3,348	116.06
Hansen, Nicole M.	\$1,296	89.85
Harper, Andrew S	\$2,154	82.04
Hyatt, Richard	\$3,653	92.66
Kassebaum, William	\$4,295	103.87
Lenz, Dana R.	\$1,197	124.35
McConnell, Andrew	\$1,463	76.06
Olague, Craig A.	\$8,023	117.52
Paxton, Phillip W.	\$3,226	78.93
Pierce, Dan	\$2,952	84.7
Rawlins, Clark	\$3,308	76.45
Sepaniak, Bernard G	\$20,533	213.54
Stern, David	\$5,204	127.35
Stiller, Thomas	\$2,444	59.81
Talatinian, Gerard	\$5,812	130.34
Troglen, Jacqueline A.	\$1,575	82.92
Vetter, Laura	\$2,655	73.64
Wachter, Martin R	\$6,790	139
Yawn, Nathan	\$1,585	68.7

Note: In addition to the foregoing, Thomas Gabbert has accrued 93.36 hours of vacation (amounting to \$5745) and Douglas P. Strachota has accrued 73.69 hours of vacation (amounting to \$3,189). Neither of these employees will be hired as employees of Purchaser. All of their accrued vacation will be paid by Seller as wages at the time of the Closing and such payment by Seller will be reflected in the Closing Statement of Net Assets through a reduction of the accrued expenses reflected therein.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

MARCH 31, 2004

PTAS

MCDONNELL, BOEHNEN, HULBERT & BERGHOFF
ENRIQUE PEREZ
300 SOUTH WACKER DRIVE - 32ND FLOOR
CHICAGO, IL 60606



102545968A

UNITED STATES PATENT AND TRADEMARK OFFICE NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/08/2003

REEL/FRAME: 014462/0133
NUMBER OF PAGES: 56

BRIEF: ASSETT PURCHASE

ASSIGNOR:
OPENGLOBE, INC.

DOC DATE: 04/22/2003

ASSIGNEE:
DIGITAL NETWORKS NORTH AMERICA,
INC.
2600 SAN TOMAS EXPRESSWAY
SANTA CLARA, CALIFORNIA 95051-0953

SERIAL NUMBER: 09478407 ✓
PATENT NUMBER:

FILING DATE: 01/06/2000
ISSUE DATE:

SERIAL NUMBER: 09694005 ✓
PATENT NUMBER:

FILING DATE: 10/23/2000
ISSUE DATE:

SERIAL NUMBER: 10002627 ✓
PATENT NUMBER:

FILING DATE: 12/05/2001
ISSUE DATE:

014462/0133 PAGE 2

SERIAL NUMBER: 10274122 ✓
PATENT NUMBER:

FILING DATE: 10/21/2002
ISSUE DATE:

SERIAL NUMBER: 60159102 ✓
PATENT NUMBER:

FILING DATE: 10/13/1999
ISSUE DATE:

SERIAL NUMBER: 09453023 ✓
PATENT NUMBER:

FILING DATE: 12/02/1999
ISSUE DATE:

SERIAL NUMBER: 10012438 ✓
PATENT NUMBER:

FILING DATE: 12/12/2001
ISSUE DATE:

SERIAL NUMBER: 09226169 ✓
PATENT NUMBER: 6473441

FILING DATE: 01/07/1999
ISSUE DATE: 10/29/2002

SERIAL NUMBER: 09689725 ✓
PATENT NUMBER: 6539210

FILING DATE: 10/13/2000
ISSUE DATE: 03/25/2003

SERIAL NUMBER: 09227086 ✓
PATENT NUMBER: 6304523

FILING DATE: 01/05/1999
ISSUE DATE: 10/16/2001

SERIAL NUMBER: 09002721 ✓
PATENT NUMBER: 6469633

FILING DATE: 01/05/1998
ISSUE DATE: 10/22/2002

ANTIONE ROYALL, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 03-622)

In re Patent of:)	
)	
Scott A. Jones et al.)	
)	
Patent No.: 6,304,523)	
)	Examiner: Tan Dinh
Issued: October 16, 2001)	
)	
For: Playback Device Having Text Display)	
And Communication with Remote)	
Database of Titles)	

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)

As assignee of record of the entire interest of the above identified

- ☐ application
- ☒ patent

REVOCATION OF PRIOR POWERS OF ATTORNEY

all powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

The undersigned hereby appoints all of the practitioners associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith and directs that all correspondence be addressed to that Customer Number: .

Customer Number: 020306
Principal attorney or agent: Bradley J. Hulbert
Telephone number: 312-913-0001

Assignee of Entire Interest:

Name: Digital Networks North America, Inc.

Address: 19 Chapin Road

Pine Brook, New Jersey 07058-9777

EVIDENCE AND CERTIFICATION OF CHAIN OF TITLE

☐ Recorded in PTO on _____

Reel _____

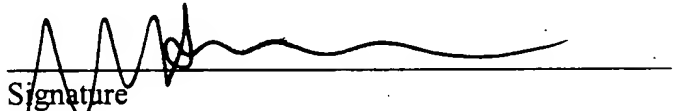
Frame _____

☒ Recorded herewith.

ASSIGNEE CERTIFICATION

In accordance with 37 C.F.R. § 3.73 the assignee hereby certifies that the evidentiary documents with respect to its ownership have been reviewed and that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take this action.

Date: 7/9/03


Signature

Name: Michael Seedman

Title: Chairman of the Board

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REISSUE PATENT APPLICATION TRANSMITTAL

Address to: Mail Stop Reissue Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Attorney Docket No.	03-622-F
	First Named Inventor	Jones
	Original Patent Number	6,304,523 B1
	Original Patent Issue Date (Month/Day/Year)	October 16, 2001
	Express Mail Label No.	EV333560244US

APPLICATION FOR REISSUE OF:

(Check applicable box)



Utility Patent



Design Patent



Plant Patent

APPLICATION ELEMENTS (37 CFR 1.173)

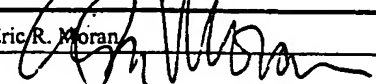
1. ☐ Fee Transmittal Form (PTO/SB/56)
(Submit an original, and a duplicate for fee processing)
2. ☐ Applicant claims small entity status. See 37 CFR 1.27.
3. ☒ Specification and Claims in double column copy of patent format
(amended, if appropriate)
4. ☒ Drawing(s) (proposed amendments, if appropriate)
5. ☐ Reissue Oath/Declaration (original or copy)
(37 C.F.R. 1.175) (PTO/SB/51 or 52)
6. ☐ Power of Attorney
7. ☒ Original U.S. Patent currently assigned? ☒ Yes ☐ No
(If Yes, check applicable box(es))
 - ☐ Written Consent of all Assignees (PTO/SB/53)
 - ☐ 37 C.F.R. 3.73(b) Statement (PTO/SB/96)
8. ☐ CD-ROM or CD-R in duplicate, Computer Program (Appendix)
or large table
9. Nucleotide and/or Amino Acid Sequence Submission
(if applicable, all of the following are necessary)
 - a. ☐ Computer Readable Form (CFR)
 - b. Specification Sequence Listing on:
 - i. ☐ CD-ROM (2 copies) or CD-R (2 copies); or
 - ii. ☐ paper
 - c. ☐ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

10. ☒ Statement of status and support for all changes to the claims. See 37 CFR 1.173(c).
11. ☐ Original Patent Grant
 - ☐ Ribboned Original Patent Grant
 - ☐ Statement of Loss (PTO/SB/55)
12. ☐ Foreign Priority Claim (35 U.S.C. 119)
(if applicable)
13. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
14. ☐ English Translation of Reissue Oath/Declaration
(if applicable)
15. ☒ Preliminary Amendment
16. ☒ Return Receipt Postcard (MPEP 503)
(Should be specifically itemized)
17. Other: Application Data Sheet

18. CORRESPONDENCE ADDRESS
☐ Customer Number: 020306 OR ☐ Correspondence address below

Name					
Address					
City		State		Zip Code	
Country		Telephone		Fax	

Name (Print/Type)	Eric R. Moran	Registration No. (Attorney/Agent)	50,967
Signature		Date	10/16/2003

This collection of information is required by 37 CFR 1.173. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Reissue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. 03-622-F)

In re Application for Reissue of:)	
)	
U.S. Patent No. 6,304,523)	
)	
Inventors: Scott A. Jones and Douglas M. Keenan)	
)	Examiner: TBD
Serial No.: TBD)	
)	
)	Group Art Unit: TBD
For: Playback Device Having Text Display)	
and Communication with Remote)	
Database of Titles)	

PRELIMINARY AMENDMENT

Mail Stop REISSUE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants intend to broaden the claims to the above-referenced patent by submission of this reissue application and associated amended claims. Please make the changes specified herein to the copy of the printed patent.

AMENDMENTS TO THE CLAIMS

Please add claims 8-11 as follows:

8. (New) An apparatus for playback of recordings and communication with a remote database to obtain information related to the recordings, comprising:

an enclosure;

a recorded signal output device, disposed in said enclosure, to reproduce a recorded signal from a recording;

a controller, disposed in said enclosure and coupled to said recorded signal output device, to control said apparatus;

a display, mounted at a first surface of said enclosure and coupled to said controller, to display information related to said recording;

a memory, disposed in said enclosure and coupled to said controller, to store the information related to said recording for output to said display in response to output of the recorded signal by said recorded signal output device; and

a communication device, disposed in said enclosure and coupled to said controller, to obtain the information related to said recording by establishing communication with the remote database via the Internet, querying the remote database based on information in the recorded signal reproduced from the recording and supplying the information related to said recording from the remote database to said memory.

9. (New) The apparatus of claim 8, wherein establishing communication with the remote database via the Internet comprises use of an Ethernet interface.

10. (New) The apparatus of claim 8, wherein establishing communication with the remote database via the Internet comprises use of a TCP/IP protocol.

11. (New) The apparatus of claim 8, wherein establishing communication with the remote database via the Internet comprises use establishing communication with a local area network that has a connection to the Internet.

STATUS OF THE CLAIMS AND SUPPORT FOR THE AMENDMENTS

The original patent contained claims 1-7. Applicants have added claims 8-11 in this Preliminary Amendment.

Support for the use of the term "information related to said recording" in claim 8 can be found in the specification at, at least, column 2, lines 17-18 ("a display to display at least textual data"); and column 4, lines 16-17 ("display 20 may be able to display many more characters and possibly graphics also"). Support for the use of the term "via the Internet" in claim 8 can be found in the specification at, at least, column 2, lines 46-55; and column 4, line 34 through column 5, line 12.

Support for the use of the term "use of an Ethernet interface" in claim 9 can be found in the specification at, at least, column 4, lines 39-40. Support for the use of the term "use of a TCP/IP protocol" in claim 10 can be found in the specification at, at least, column 2, lines 45-55 and column 4, line 45 through column 5, line 12. Support for the use of the term "with a local area network that has a connection to the Internet" in claim 11 can be found in the specification at, at least, column 4, line 66 through column 5, line 12.

REMARKS

If there are any questions or comments regarding this Preliminary Amendment or Reissue Application, the Examiner is encouraged to contact the undersigned attorney as indicated below.

Date: 10/16/2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric R. Moran", written over a horizontal line.

Eric R. Moran

Registration No. 50,967

Telephone: 312-913-0001

Facsimile: 312-913-0002

McDonnell Boehnen Hulbert & Berghoff

300 South Wacker Drive

Chicago, IL 60606



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/687,510	10/16/2003	Scott A. Jones	03-622-F

CONFIRMATION NO. 6721

020306
 MCDONNELL BOEHNEN HULBERT & BERGHOFF
 300 SOUTH WACKER DRIVE
 SUITE 3200
 CHICAGO, IL 60606

FORMALITIES LETTER



OC000000011347208

Date Mailed: 11/24/2003

NOTICE TO FILE MISSING PARTS OF REISSUE APPLICATION

Filing Date Granted

An application number and filing date have been accorded to this reissue application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
Applicant must submit \$ 770 to complete the basic filing fee for a non-small entity. If appropriate, applicant may make a written assertion of entitlement to small entity status and pay the small entity filing fee (37 CFR 1.27).
- The oath or declaration is missing.
A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- Consent of assignee is missing. 37 CFR 1.172 requires that a reissue oath/declaration be accompanied by the written consent of all assignees.
- Assignee's statement under 37 CFR 3.73(b) establishing ownership of the patent is missing. 37 CFR 1.172 requires that all assignees consenting to the reissue application establish their ownership interest in the patent by filing in the reissue application a statement in accordance with 37 CFR 3.73(b).

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- Additional claim fees of \$86 as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$986** for a Large Entity

- **\$770** Statutory basic filing fee.

- **\$130** Late oath or declaration Surcharge.
- Total additional claim fee(s) for this application is **\$86**
 - **\$86** for 1 independent claims over the original patent.

Replies should be mailed to: Mail Stop Missing Parts
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*



Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE





2 MONTHS
FREE



NO CREDIT CARD REQUIRED!

[Print Screen](#) | [Back to WhitePages.com Results](#)

Search Information:

Searched terms: "keenan, douglas, IN"

Search took 0.04 seconds

Listings 1-2 of 2 Total Results

» 1 / 2

Keenan, Douglas

505 Tamarack Ln
Noblesville, IN 46060-9132
(317) 776-1144

» 2 / 2

Keenan, Douglas

505 Tamarack Ln
Noblesville, IN 46060-9132
(317) 776-1404



McDonnell Boehnen Hulbert & Berghoff LLP

300 South Wacker Drive 312 913 0001 phone
Chicago, Illinois 60606-6709 312 913 0002 fax
www.mbhb.com

May 28, 2004

Doug Keenan
505 Tamarack Lane
Noblesville, IN 46060

Re: U.S. Reissue Patent Application
"Playback Device Having Text Display and
Communication With Remote Database of Titles"

Dear Doug:

I am writing in regard to an Openglobe patent with yourself and Scott A. Jones listed as the inventors. The patent is entitled "Playback Device Having Text Display and Communication With Remote Database of Titles." I have enclosed a copy of the patent.

We currently need to file some procedural papers related to this patent that require your signature. In particular, a reissue patent application has been filed for this patent, and we need to file a new Oath/Declaration that requires the signatures of the original inventors. I would greatly appreciate your help in this matter. I have enclosed a copy of the reissue patent application and the reissue Oath/Declaration. Please review the reissue application and the Oath/Declaration and sign and date the Oath/Declaration in the spaces provided. (If any changes need to be made to your address/citizenship on the Oath/Declaration, please make and initial the changes).

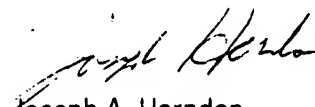
Please return the signed Oath/Declaration to me in the enclosed addressed return envelope. We would appreciate receiving the signed declaration as soon as possible.

In addition, please recall that you are obligated by a "duty of disclosure" under the U.S. Patent Laws, which requires you to submit to the Patent Office any and all information of which you are aware that a Patent Examiner may consider to be material to the patentability of your invention, whether the information is considered alone or in combination with other information. This duty will continue to exist for as long as the patent application is pending before the Patent Office, and failure to comply with the duty

can render a resulting patent unenforceable in federal court. Thus, if you are aware of any such information (e.g., articles, technical specifications, instances of public use, etc., dated before January 5, 1999), please provide it to me so that we can determine whether to submit it to the Patent Office as required.

Please call me at the number below if you have any questions or concerns. We appreciate your cooperation in this matter.

Sincerely,



Joseph A. Herndon
Patent Agent
312 913 0001 x 2175
herndon@mbhb.com

cc: George Lee
Eric Moran



McDonnell Boehnen Hulbert & Berghoff LLP

300 South Wacker Drive 312 913 0001 phone
Chicago, Illinois 60606-6709 312 913 0002 fax
www.mbhb.com

June 9, 2004

Doug Keenan
505 Tamarack Lane
Noblesville, IN 46060

Re: U.S. Reissue Patent Application
"Playback Device Having Text Display and
Communication With Remote Database of Titles"

Dear Doug:

I am writing in regard to an Openglobe patent with yourself and Scott A. Jones listed as the inventors. The patent is entitled "Playback Device Having Text Display and Communication With Remote Database of Titles." I have enclosed a copy of the patent.

I sent a letter to you previously on May 28, 2004 regarding this matter. I am writing again because we need to file some procedural papers, which relate to this patent that require your signature, by June 24, 2004.

In particular, a reissue patent application has been filed for this patent, and we need to file a new Oath/Declaration that requires the signatures of the original inventors. I would greatly appreciate your help in this matter. I have enclosed another copy of the reissue patent application and the reissue Oath/Declaration. Please review the reissue application and the Oath/Declaration and sign and date the Oath/Declaration in the spaces provided. (If any changes need to be made to your address/citizenship on the Oath/Declaration, please make and initial the changes).

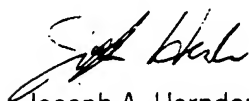
Please return the signed Oath/Declaration to me in the enclosed addressed return envelope. We would appreciate receiving the signed declaration as soon as possible.

In addition, please recall that you are obligated by a "duty of disclosure" under the U.S. Patent Laws, which requires you to submit to the Patent Office any and all information of which you are aware that a Patent Examiner may consider to be material to the

patentability of your invention, whether the information is considered alone or in combination with other information. This duty will continue to exist for as long as the patent application is pending before the Patent Office, and failure to comply with the duty can render a resulting patent unenforceable in federal court. Thus, if you are aware of any such information (e.g., articles, technical specifications, instances of public use, etc., dated before January 5, 1999), please provide it to me so that we can determine whether to submit it to the Patent Office as required.

Please call me at the number below if you have any questions or concerns. **Again, we must file the signed Oath/Declaration by June 24, 2004.** We appreciate your timely cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Herndon", written over a horizontal line.

Joseph A. Herndon
Patent Agent
312 913 0001 x 2175
herndon@mbhb.com

cc: George Lee
Eric Moran

Reissue Patent Application

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE (Case No. 03-622-F)

PATENT

In re Application for Reissue of:)	
)	
U.S. Patent No. 6,304,523)	
)	
Inventors: Scott A. Jones and Douglas M. Keenan)	
)	Examiner: TBD
Serial No.: TBD)	
)	Group Art Unit: TBD
For: Playback Device Having Text Display)	
and Communication with Remote)	
Database of Titles)	

PRELIMINARY AMENDMENT

Mail Stop REISSUE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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a recorded signal output device, disposed in said enclosure, to reproduce a recorded signal from a recording;

a controller, disposed in said enclosure and coupled to said recorded signal output device, to control said apparatus;

a display, mounted at a first surface of said enclosure and coupled to said controller, to display information related to said recording;

a memory, disposed in said enclosure and coupled to said controller, to store the information related to said recording for output to said display in response to output of the recorded signal by said recorded signal output device; and

a communication device, disposed in said enclosure and coupled to said controller, to obtain the information related to said recording by establishing communication with the remote database via the Internet, querying the remote database based on information in the recorded signal reproduced from the recording and supplying the information related to said recording from the remote database to said memory.

9. (New) The apparatus of claim 8, wherein establishing communication with the remote database via the Internet comprises use of an Ethernet interface.

10. (New) The apparatus of claim 8, wherein establishing communication with the remote database via the Internet comprises use of a TCP/IP protocol.

11. (New) The apparatus of claim 8, wherein establishing communication with the remote database via the Internet comprises use establishing communication with a local area network that has a connection to the Internet.

STATUS OF THE CLAIMS AND SUPPORT FOR THE AMENDMENTS

The original patent contained claims 1-7. Applicants have added claims 8-11 in this Preliminary Amendment.

Support for the use of the term "information related to said recording" in claim 8 can be found in the specification at, at least, column 2, lines 17-18 ("a display to display at least textual data"); and column 4, lines 16-17 ("display 20 may be able to display many more characters and possibly graphics also"). Support for the use of the term "via the Internet" in claim 8 can be found in the specification at, at least, column 2, lines 46-55; and column 4, line 34 through column 5, line 12.

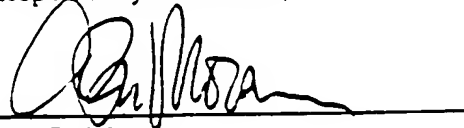
Support for the use of the term "use of an Ethernet interface" in claim 9 can be found in the specification at, at least, column 4, lines 39-40. Support for the use of the term "use of a TCP/IP protocol" in claim 10 can be found in the specification at, at least, column 2, lines 45-55 and column 4, line 45 through column 5, line 12. Support for the use of the term "with a local area network that has a connection to the Internet" in claim 11 can be found in the specification at, at least, column 4, line 66 through column 5, line 12.

REMARKS

If there are any questions or comments regarding this Preliminary Amendment or Reissue Application, the Examiner is encouraged to contact the undersigned attorney as indicated below.

Date: 10/16/2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric R. Moran", written over a horizontal line.

Eric R. Moran

Registration No. 50,967

Telephone: 312-913-0001
Facsimile: 312-913-0002

McDonnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
Chicago, IL 60606

DECLARATION AND POWER OF ATTORNEY FOR REISSUE APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and joint inventor of the subject matter which is described and claimed in patent number 6,304,523, granted October 16, 2001, and for which a reissue patent is sought on the invention entitled:

PLAYBACK DEVICE HAVING TEXT DISPLAY AND COMMUNICATION WITH REMOTE DATABASE OF TITLES

the specification of which was filed on October 16, 2003 as United States Application Serial Number 10/687,510.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56.

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply).

- ☐ by reason of a defective specification or drawing.
- ☒ by reason of the patentee claiming more or less than he had the right to claim in the patent.
- ☐ by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

At least one error upon which reissue is based: at column 2, lines 13-15, the specification discloses "an apparatus for playback of recordings and communication with a remote database to obtain information about the recordings." This phrase renders the original patent partly inoperative because the original patent claims did not include the broadest features of the invention. Thus, the patentees, in the original patent, claimed less than the patentees had a right to claim in the patent.

The nature of the broadening comprises correction of the error indicated above. Claims directed to "an apparatus for playback of recordings and communication with a remote database to obtain information about the recordings" have been submitted. The first independent claim of the submitted amended claims is exemplary:

An apparatus for playback of recordings and communication with a remote database to obtain information related to the recordings, comprising:
an enclosure;

a recorded signal output device, disposed in said enclosure, to reproduce a recorded signal from a recording;

a controller, disposed in said enclosure and coupled to said recorded signal output device, to control said apparatus;

a display, mounted at a first surface of said enclosure and coupled to said controller, to display information related to said recording;

a memory, disposed in said enclosure and coupled to said controller, to store the information related to said recording for output to said display in response to

output of the recorded signal by said recorded signal output device; and
a communication device, disposed in said enclosure and coupled to said controller, to obtain the information related to said recording by establishing communication with the remote database via the Internet, querying the remote database based on information in the recorded signal reproduced from the recording and supplying the information related to said recording from the remote database to said memory.

This claim includes limitations directed to "information related to said recording" and thus serves to correct the error indicated above.

All errors in this reissue application arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the practitioners associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and I direct that all correspondence be addressed to that Customer Number.

Customer Number: 020306
Principal attorney or agent: Eric Moran, Reg. No. 50,967
Telephone number: 312-913-0001

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: Scott A. Jones

Inventor's signature: _____ Date: _____
Residence: 1150 West 116th Street, Carmel, Indiana 46032
Citizenship: United States of America
Post Office Address: 1150 West 116th Street, Carmel, Indiana 46032

Full name of second joint inventor: Douglas M. Keenan

Inventor's signature: _____ Date: _____
Residence: 505 Tamarack Lane, Noblesville, Indiana 46060
Citizenship: United States of America
Post Office Address: 505 Tamarack Lane, Noblesville, Indiana 46060